

1                   IN THE KENTUCKY PUBLIC SERVICE COMMISSION

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4       IN RE:    INVESTIGATION:

5               Case No. 2003-00433  
6               AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,  
7               TERMS, AND CONDITIONS OF LOUISVILLE GAS AND  
8               ELECTRIC COMPANY

9               and

10              Case No. 2003-00434  
11              AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND  
12              CONDITIONS OF KENTUCKY UTILITIES COMPANY

13                               \*     \*     \*

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15                               SWORN STATEMENT

16                                       OF

17                               RICHARD G. RAFF

18                               AUGUST 12, 2005

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8/25/05 *[Signature]*

I N D E X

Exhibit No. 1..... 50  
(Page 20 of the Public Service Commission  
Employee Handbook)

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE  
COMMISSION:

JONATHAN D. GOLDBERG  
Goldberg & Simpson  
3000 National City Tower  
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Louisville, Kentucky 40202

1                   The sworn statement of RICHARD G.  
2   RAFF, taken in the offices of the Public Service  
3   Commission, 211 Sower Boulevard, Frankfort, Kentucky,  
4   on Friday, the 12th day of August, 2005, at  
5   approximately 11:25 a.m.

6  
7                   EXAMINATION

8  
9   BY MR. GOLDBERG:

10                  Q.       Would you state your full name,  
11   please.

12                  A.       Richard G. Raff, R-A-F-F.

13                  Q.       And your business address?

14                  A.       I think it's 211 Sower Boulevard.

15                  Q.       That's terrific, it is. And your  
16   occupation --

17                  A.       It's like asking me my home phone  
18   number. I never call it.

19                  Q.       Right.

20                  A.       I'm employed as a staff attorney,  
21   Public Service Commission.

22                  Q.       All right, sir. And how long have you  
23   been a staff attorney at the Public Service  
24   Commission?

25                  A.       Just over 24 years.

1           Q.       All right. Tell me generally, as  
2 staff attorney at the Public Service Commission, what  
3 your duties are.

4           A.       Review utility applications, which  
5 would include applications for adjustments of rates,  
6 financing, issuing of financing, construction of  
7 facilities, mergers; and reviewing those for legal  
8 issues and working with other disciplines at the  
9 commission on cases; advising the staff, as well as  
10 the commissioners, on legal issues; participating in  
11 administrative hearings here at the commission;  
12 representing the commission in court, cases arising  
13 out of commission orders; writing legal opinions. I  
14 think that covers everything.

15           Q.       Adjustment of rate case. Is that  
16 euphemistically known as a rate case?

17           A.       Yes.

18           Q.       Okay. And who do you report to?

19           A.       We at times have a general counsel.

20           Q.       Presently you do not.

21           A.       Presently we do not.

22           Q.       But when you do have one, you do  
23 report to general counsel?

24           A.       Yes.

25           Q.       Okay. During the period beginning

1 January 1, 2003, through June 30, 2004, that 18-month  
2 period, were you reporting to any general counsel or  
3 general counsels?

4 A. From January 1 of 2003 -- and I'm not  
5 sure if it continued -- the general counsel was Debra  
6 Eversol, and I can't remember whether she was still  
7 the general counsel at the end of June of 2004. My  
8 recollection was that Jason Bentley had been hired as  
9 general counsel. And I thought that he came in late  
10 June of 2004, but it may have been early July. So  
11 I'm just not sure.

12 Q. Okay. Tell me what your role is in  
13 rate cases.

14 A. In general?

15 Q. Yes.

16 A. When a case gets filed, I would review  
17 the application to determine whether it has complied  
18 with certain statutory requirements that need to be  
19 complied with in order to deem the application to be  
20 filed. Those are sort of technical things, whether  
21 there's copies of articles of incorporation ...

22 Q. Let me be more specific.

23 A. There's three or four. I can't  
24 really --

25 Q. Does the legal staff, and thus the

1 staff, take a position on a particular rate case?

2 A. We do not take a public position. We  
3 review the applications. We -- as the attorney, I  
4 typically establish a procedural schedule that  
5 includes discovery and an opportunity for interveners  
6 to file testimony and then for a public hearing.  
7 Staff, based on its review of the application, will  
8 engage in discovery, which is typically limited to  
9 information requests. And we issue those to both the  
10 utility and interveners, if there are any. And then  
11 we participate in the hearing and cross-examining  
12 witnesses. We do not file testimony in rate cases,  
13 or typically. There -- I guess there are some  
14 exceptions for small water and sewer cases, but --

15 Q. So you do not take a position on the  
16 merits. You're simply there to make sure that all  
17 information gets presented to the commissioners; is  
18 that a correct statement?

19 A. Correct, except for there are small  
20 water and sewer cases in which the staff does prepare  
21 a report, which basically is the equivalent of  
22 staff's testimony, in which staff will either adopt  
23 the -- the adjustments and rate level proposed by the  
24 small water or sewer utility, or staff will disagree  
25 and present its own recommended rates.

1           Q.       With regard to a rate case such as  
2 LG&E/KU -- and their numbers were 2003-00433 and  
3 2003-00434 respectively -- what role would you be  
4 playing?

5           A.       Similar to what I said. Staff did not  
6 and does not in large cases prepare any public report  
7 or take a public position on issues, so my role is to  
8 work with staff -- work with staff to develop data  
9 requests and develop hearing -- or develop questions  
10 for public hearing, rule on any motions that are  
11 filed.

12          Q.       Would those be discovery motions?

13          A.       Any motions. Discovery, motions to  
14 intervene, motions to strike. Anything that would  
15 come in the door.

16          Q.       The staff would rule on those?

17          A.       Well, we would review them, and I  
18 would draft an order. But they're all ruled upon by  
19 a commission order.

20          Q.       So they would be ruled upon by the  
21 commission members.

22          A.       Yes.

23          Q.       Okay. Tell me when you first had  
24 knowledge that LG&E/KU were going to file rate cases.

25          A.       I would assume that the first

1 knowledge I had was when they filed a notice of  
2 intent, which under our regulations has to be filed  
3 at least 30 days prior to filing of the application.

4 Q. Notice of intent was filed on  
5 November 29th, 2003. Do you have a recollection of  
6 anyone from LG&E or KU -- and "anyone" being either  
7 counsel or employees direct -- contacting you about  
8 the rate cases?

9 A. I have no such knowledge.

10 Q. Okay.

11 A. Now, let me say, there were -- prior  
12 to that date, we were engaged in numerous other cases  
13 with LG&E and KU -- and we're talking now almost two  
14 years ago -- and I -- it's possible that we, meaning  
15 staff, knew before the -- the notice was sent in that  
16 they were intending -- or leaning towards filing a  
17 rate case. And that -- that knowledge could have  
18 come from, you know, just other cases where, you  
19 know, you're talking about financial type issues and,  
20 you know, it might become clear that, you know,  
21 either from what someone said explicitly or  
22 implicitly, you know, that based on their financial  
23 condition they were looking at a rate case. But, I  
24 mean, I don't have any particular knowledge --

25 Q. Okay.



1 A. -- or recollection.

2 Q. So you do not have a specific  
3 recollection of such a conversation.

4 A. No, no.

5 Q. Okay. Just for my reference -- and  
6 again, let's use this November 29th, 2003 date, the  
7 notice of intent to file as a focal point. During  
8 that period of time and going back to January the 1st  
9 of 2003, what is your best recollection of various  
10 cases that were pending on behalf of LG&E or KU?

11 A. I think there was an LG&E -- two --  
12 two cases, one LG&E and one KU, involving an earnings  
13 sharing mechanism. Both of those were subsequently  
14 incorporated into the rate case. There was a --  
15 there was an application by KU to establish some type  
16 of a large power user rate that would have been  
17 applicable to North American Stainless. And I think  
18 there was a complaint by -- separate case, which was  
19 a complaint case, by North American Stainless  
20 regarding either their current rate or this proposed  
21 rate. And I believe those two cases got consolidated  
22 and the consolidated proceeding was subsequently  
23 rolled into the rate case. I -- I can remember those  
24 only because they were ultimately rolled into the  
25 rate case, but my recollection is that there were a

1 number of other cases. There was probably some  
2 environmental surcharge proceedings that were ongoing  
3 in the early part of 2003, and I'm fairly certain  
4 there were other cases. But without looking at a  
5 docket, I couldn't tell you.

6 Q. Going back to the North American  
7 Stainless cases, I'll represent to you that they  
8 filed a complaint in September of 2003 against KU,  
9 and that KU subsequently sought tariff with regard to  
10 the relationship with North American Stainless. Did  
11 you participate as a staff member in either of those  
12 two cases prior to consolidation which occurred in  
13 the spring of 2004?

14 A. My recollection is no, that I did not.

15 Q. Do you have a recollection of having  
16 any communication with anyone at North American  
17 Stainless about those cases prior to November of  
18 2003? And when I say "November," the notice of  
19 intent to file.

20 A. I have no recollection of having any  
21 conversation with anyone outside the agency with  
22 regards to those cases.

23 Q. Okay. And "those cases" being North  
24 American Stainless complaint or the tariff?

25 A. Yes, both of those.

1           Q.       All right. Let's focus in on the  
2 filing of the rate adjustment itself which occurred  
3 at the end of December 2003, or as you had  
4 referenced, 30 days after the notice of intent to  
5 file. Between the notice of intent to file and the  
6 end of December 2003, do you have a recollection of  
7 any communication with LG&E or KU representatives?

8           A.       I have no recollection of any  
9 communication by myself. There may have been  
10 communication from the commission, and that would  
11 have been in the form of a letter that would be in  
12 the case file or an order, because oftentimes we --  
13 sometimes -- not often, but sometimes we'll issue a  
14 data request prior to the application being filed and  
15 tell them that the responses are due, you know,  
16 14 days after the date of filing their application.  
17 And I just don't recall whether we did something like  
18 that.

19           Q.       Other than a notice of record, being a  
20 pleading filed in a case, do you have a recollection  
21 of any communication with LG&E/KU personnel?

22           A.       No.

23           Q.       Okay. Would -- as of that point in  
24 time, late December 2003, would all interveners have  
25 been identified?

1           A.       Typically no. The -- the notice of  
2 intent that is required to be filed I believe has to  
3 be sent by the utility to the attorney general's  
4 office. So typically the attorney general in a major  
5 case will intervene prior to the application actually  
6 being filed. Oftentimes, the industrial customers  
7 have knowledge of the case. I assume it's from just  
8 reviewing our Web site, but most of the other  
9 entities that ultimately intervened in this case I  
10 don't believe had intervened until the application  
11 was filed.

12           Q.       Do you have a recollection of having  
13 communicated with any representatives of the attorney  
14 general or other interveners between the notice of  
15 intent to file and date of actual filing?

16           A.       I have no specific recollection. It  
17 wouldn't be unusual during that period if  
18 representatives of the attorney general's office or  
19 industrial customers were here for another proceeding  
20 for there to have been a conversation about, "Hey,  
21 did you see the" -- "the notice? It's probably going  
22 to be a big case," something of that nature.

23           Q.       But you have no specific recollection?

24           A.       No.

25           Q.       Okay. Tell me what course of activity

1 you would have been engaged in on the two rate cases  
2 from the date of filing, late December 2003, until  
3 the date of the first informal conference,  
4 April 28th, 2004.

5 A. Well, I think it would cover the same  
6 type of work that I've already stated. I would have  
7 reviewed the applications to determine whether they  
8 met the minimum filing requirements. I would have,  
9 in conjunction with staff, developed a -- a  
10 procedural schedule. I would have drafted orders on  
11 any motions. I would have drafted questions for data  
12 requests, reviewed questions that other staff members  
13 drafted for a data request. Usually would coordinate  
14 all of the questions to make sure that they were  
15 issued on the -- by the due date. Would have  
16 reviewed all responses to data requests. Would have  
17 reviewed intervenor testimony.

18 Q. Who were the interveners? Can you  
19 identify them?

20 A. Well, they were not totally the same  
21 between the two cases. As I recall, there were --

22 Q. Collectively.

23 A. -- industrial customers.

24 Q. Was that KIUC?

25 A. KIUC, Kentucky Industrial Utility

1 Customers. The attorney general's office.  
2 Lexington-Fayette Urban County Government was in the  
3 KU case. And North American Stainless, I believe,  
4 was in the KU case. The -- the State Division of  
5 Energy was in both cases. The federal Department of  
6 Defense I believe was just in the LG&E case. The --  
7 I think Louisville Legal Aid was in the LG&E case,  
8 and whether they intervened under their own name or  
9 under the name of an individual customer, I don't  
10 recall. The Community Action Council of Central  
11 Kentucky was in the KU case. The Kentucky  
12 Association of Community Action Agencies was in both  
13 cases.

14 Q. Kroger?

15 A. Kroger, yes. They were -- although  
16 represented by the -- I think the same attorney as  
17 KIUC, they were a separate intervener. May have been  
18 one or two, but that's all I can recall.

19 Q. From the date of filing, late  
20 December 2003 to April 28th, 2004, do you have a  
21 recollection of communication with representatives of  
22 the interveners? That includes the attorney general.

23 A. I typically do not have any  
24 communication regarding the substance of the case  
25 because that would be an ex parte contact, and that's

1 something that we don't condone. It would not have  
2 been unusual to have had a conversation on a  
3 procedural issue such as someone, for example, who  
4 had filed a motion calling me and asking did I  
5 anticipate an order to be issued, you know, in a day  
6 or two or five or whatever. It would not be unusual  
7 for me to have called or e-mailed someone and asked  
8 who -- someone who, you know, was on the other side  
9 of a motion -- asked whether they intended to file a  
10 response, and if so when. Because we do not have any  
11 rules on the time in which motions have to be  
12 responded to, and we try to avoid situations that  
13 sometimes occur where you're, you know, issuing an  
14 order on a motion which you thought was, you know,  
15 uncontested and then the day you issue the order you  
16 discover that someone has filed an objection or a  
17 protest and it sort of passed in the hallway without  
18 anyone realizing the response was here. So often I  
19 would give somebody a call and ask, you know, "Are  
20 you going to respond to this?"

21           Beyond that, I have a recollection of  
22 two issues regarding PSC data requests to LG&E and KU  
23 in which I got either an e-mail or a call from  
24 someone from LG&E or KU wanting some discussion and  
25 explanation. One of the data requests was for the

1 billing records -- the billing statements that Odgen,  
2 Newell & Welch had rendered to LG&E and KU. And we  
3 had gotten those as part of the data response, but  
4 there were a number of the billing statements that  
5 had been redacted under a claim of attorney/client  
6 privilege. And staff felt that without some  
7 disclosure of the actual work that had been  
8 performed, we would be unable to determine whether  
9 that work was performed for the utilities as opposed  
10 to, you know, an unregulated affiliate of LG&E  
11 Energy, and that without additional information, we  
12 wouldn't be able to consider it for rate-making  
13 purposes. On that issue I remember having a  
14 discussion I think with Kendrick Riggs. I -- I  
15 wouldn't swear to it, but ...

16 Q. It was for document request purposes?

17 A. Yes, related to a document request.

18 Q. Okay. You had mentioned two --

19 A. And the other one was similar. We had  
20 issued a -- a data request asking LG&E and KU to  
21 update certain schedules that had previously been  
22 filed, and the updates were to reflect certain  
23 changes that had occurred. And my recollection, the  
24 conversation that we had was that the -- the company  
25 said that some of the -- the changes would require



1 revisions to a significant number of documents and  
2 that they had already intended to file those as part  
3 of their rebuttal testimony and wanted to make sure  
4 that it was okay for them to, in effect, partially  
5 respond to the data requests by saying that, you  
6 know, here's some of the information and the rest of  
7 it will be provided in a few weeks when we file --  
8 when they file their rebuttal testimony. And we said  
9 that as long as it came in at some point in time,  
10 that was sufficient.

11 Q. Okay. Other than those two contacts,  
12 none that you remember?

13 A. Those are the only two that I can  
14 recall with LG&E and KU.

15 Q. How about the interveners?

16 A. The only one that I can recall with  
17 the attorney general's office -- and I -- I don't  
18 believe that I was directly involved, but I got a  
19 call from a -- a staff member who was doing the  
20 accounting work and said that he had received a call  
21 from Betsy Blackford asking for some explanation of  
22 something. And -- I'm not sure if he got a call or  
23 an e-mail, but the staff person called me and asked  
24 me what he should do. And we discussed it, and I  
25 told him to either call her back or send her an

1 e-mail and, you know, give her the explanation that  
2 she was asking for because it seemed to be relatively  
3 innocuous and not out of order.

4 Q. Okay. Have we discussed all of the  
5 contacts between date of filing and April 28, 2004?

6 A. I can recall a discussion just shortly  
7 before April 28th with Kendrick Riggs. And I -- I  
8 can't remember if it was a telephone discussion or an  
9 e-mail, but I've reviewed my e-mails and I didn't  
10 seem to see anything there. But he had indicated  
11 that he thought it would be useful to have an  
12 informal conference for the purpose of discussing  
13 some of the procedural issues prior to the hearing,  
14 in particular the scheduling of witnesses, because I  
15 think there was maybe 25 witnesses and many of which  
16 were from out of town. And I concurred and told him  
17 I thought that was a good idea. And we may have had  
18 another conversation regarding available dates, but  
19 I -- I don't have any recollection, but that would  
20 not be unusual for someone who is looking for a  
21 conference to ask, you know, is staff available on  
22 the following dates, something like that.

23 Q. Any other contacts you can recall?

24 A. That's all that I can recall.

25 Q. Okay. Let's go to the informal

1 conference, April 28th, 2004. Do you recall being in  
2 attendance on that day?

3 A. Generally.

4 Q. All right. Tell me what you recall of  
5 the day's events.

6 A. I believe that LG&E/KU had a list of  
7 witnesses. There were at least 12 or 15 witnesses  
8 who had filed testimony, and then there were also  
9 maybe a half a dozen LG&E/KU personnel who had  
10 responded to data requests but had not filed  
11 testimony. And there was, I believe, a -- a  
12 discussion on the 28th about whether any party or  
13 staff wanted to question any of the LG&E/KU personnel  
14 who had responded to data requests but not filed  
15 testimony, and if not, whether they could -- whether  
16 companies could not have to bring those people to the  
17 hearing.

18 And I think that -- I'm not sure if  
19 anyone made any commitments at the -- on the 28th. I  
20 think there was an agreement to get back to LG&E and  
21 KU by the 30th with a statement as to whether they  
22 wanted to cross any of the people who just responded  
23 to data requests. I think there was a discussion of  
24 the -- generally the order of the witnesses to the  
25 extent that certain out-of-town witnesses would not

1 be able to be here on the 1st or the second day of  
2 the hearing. My recollection, the hearing had been  
3 scheduled to start the following Tuesday and run  
4 through Friday. So I'm fairly certain, as typically  
5 happens, there are some parties whose witnesses would  
6 prefer to be here on a certain day or two and not  
7 have to sit for four full days.

8 Q. The informal conference is an  
9 on-the-record conference amongst all the parties?

10 A. Off the record.

11 Q. Off the record. Amongst all the  
12 parties?

13 A. Yes.

14 Q. Were all the parties present, to the  
15 best of your knowledge?

16 A. I don't -- I don't recall if all the  
17 parties -- I do recall there being a telephone hookup  
18 with the -- the attorney for the federal Department  
19 of Defense. Whether anyone else participated by  
20 phone, I -- I do not recall.

21 Q. Okay. Who was present for the Public  
22 Service Commission, staff members?

23 A. I was. Jeff Shaw, Isaac Scott were.  
24 There was probably another person or two, but off the  
25 top of my head, I don't recall. And there would be

1 a -- I think that I did a -- a memo to the case  
2 file -- or I typically do a memo to the case file.  
3 Whether I did one for that conference or not, I am  
4 not certain. But if I did one, it would typically  
5 include a copy of a sign-in sheet.

6 Q. Okay. I have the sign-in sheets  
7 and --

8 A. Was there a --

9 Q. Yes.

10 A. Okay.

11 Q. How long did the informal conference  
12 last?

13 A. My recollection, it went most of the  
14 day, that after we discussed these procedural  
15 matters, that we then turned to a substantive  
16 discussion of some of the issues in the -- in the  
17 cases. And I think that there was some discussion of  
18 the -- the earnings sharing mechanism. And after  
19 some extended discussion, I think we took a late  
20 lunch break. And then sometime in the afternoon the  
21 parties kind of collectively reached an agreement to  
22 resolve the -- all the issues outstanding regarding  
23 the earnings sharing mechanism. And I believe that  
24 also on that day that LG&E and KU passed out a -- I  
25 think it was a written sheet that contained a list of

1 what they thought were the uncontested issues in the  
2 rate case, and then a list of, based on what had been  
3 disclosed in intervener testimony, the contested  
4 issues. And I think that LG&E may have on that day  
5 issued -- or issued -- not issued, but threw out a --  
6 a number for settling the -- the rate cases.

7 Q. You say "a number." Are you talking  
8 about a --

9 A. Revenue requirements.

10 Q. -- proposal on revenue requirement?

11 A. Revenue requirements number.

12 Q. Was your recollection that the  
13 proposal was for both electricity and gas?

14 A. Yes.

15 Q. Okay.

16 A. Yeah. It was basically -- there were  
17 two cases that were filed, you know, two rate cases.  
18 The LG&E included an increase in both electric and  
19 gas service, and the KU was just the electric.  
20 That's all they operate.

21 Q. All right, sir. I trust everybody was  
22 in the same room during these discussions?

23 A. To the best of my recollection, yes.

24 Q. Okay. Other than the conversations in  
25 the room, which I'm told is hearing room 2?

1           A.       Yes.

2           Q.       Okay. Other than those conversations,  
3 do you have a recollection of participating in any  
4 other conversations on the merits on April 28, 2004  
5 with any of the parties?

6           A.       Not on the merits of the -- the rate  
7 cases. With regards to the earnings sharing  
8 mechanism, after some extended discussion,  
9 everyone -- when I say "extended discussion," I --  
10 staff -- let me say generally staff participated in  
11 the discussion, but we were -- I can't think of the  
12 right word to use.

13          Q.       Are you describing the role?

14          A.       Yeah. We were aware that -- that we  
15 were not only there in an effort to facilitate any  
16 settlement discussions, but, you know, to the extent  
17 issues were not settled, that we would be ultimately  
18 advising the commission. So other than asking  
19 questions and trying to clarify issues, we did not  
20 actually do any negotiating. We didn't throw out any  
21 offer, any counteroffer. We left that up to the  
22 parties, and we just sort of were more playing a role  
23 of observer and sort of facilitator.

24          Q.       So that's a fair statement to say no  
25 conversations occurred, that you're aware of, that

1     you had, other than what was occurring in the room  
2     with interveners and the parties.

3             A.       Yeah. The exception related to the --  
4     to the earnings sharing mechanism. And after the  
5     discussion of that issue, all the parties were in  
6     agreement except the state Division of Energy. And I  
7     recall having a conversation with the attorney for  
8     the Division of Energy, and I recall that was in the  
9     adjoining conference room. LG&E and KU may have been  
10    there too. It was not a -- wasn't an effort to  
11    convince them to join in the settlement. I think it  
12    was more an effort to, again, kind of clarify the  
13    issues and get a better understanding of their  
14    concerns about not wanting to join in with the other  
15    parties in the settlement. And it's my recollection  
16    that after the attorney had some further discussions  
17    with individuals at a higher level within that  
18    agency, that decisions were made that they should  
19    join in with the other parties to this settlement of  
20    the earnings sharing mechanism issues.

21            Q.       Was that decision reported back to the  
22    main group?

23            A.       It was later that afternoon.

24            Q.       Okay. Now, any other conversations  
25    not taking place in the room that you participated



1 in? And "the room" being the --

2 A. Not that I am aware of. I -- there  
3 may have been -- may have been people coming and  
4 going and having conversations outside of the -- the  
5 group that was in hearing room No. 2. And I don't --  
6 I don't recall -- it's very possible that after LG&E  
7 discussed the issues and threw out a revenue  
8 requirement number, that LG&E and the KU folks  
9 probably left the room. And staff probably remained  
10 with the interveners, and there may have been a  
11 discussion. But we would have only done that upon  
12 getting approval of LG&E and KU to stay with the  
13 interveners for their discussion and approval of the  
14 interveners to make sure that they wanted us to  
15 remain for any discussions that they had.

16 Q. Okay. Between April 28th and the  
17 first day of hearing, May 4th, do you recall any  
18 conversations with any of the parties, be they  
19 interveners or LG&E/KU representatives?

20 A. My recollection, when we concluded at  
21 the end of the day on the -- on the 28th, there was  
22 some discussion of possibly getting back together at  
23 some point in time prior to the commencement of the  
24 hearing.

25 Q. Commencement was May 4th?

1           A.       May 4th. And I recall getting an  
2 e-mail -- I don't recall whether anything was  
3 specifically established or not. I recall getting an  
4 e-mail on the morning of the 29th, and I believe it  
5 was from the attorney for the industrial customers --

6           Q.       Mr. Kurtsinger?

7           A.       Mr. Kurtz.

8           Q.       Kurtz.

9           A.       -- requesting -- or suggesting that he  
10 and the attorney general's office were going to try  
11 to come up with a counteroffer to the LG&E and KU  
12 offer.

13                   I can't remember whether anyone made  
14 any counteroffers at the end of the 28th, but I do  
15 remember Kurtz saying on the morning of the 29th that  
16 they were going to -- he was going to try to work  
17 with the AG and come up with a counteroffer. And I  
18 believe that there was an agreement through e-mails  
19 that we would have a further face-to-face meeting on  
20 the afternoon of the 29th at the commission's  
21 offices. And my recollection is that we did have  
22 such a meeting and that another offer -- or  
23 counteroffer was presented by the industrial  
24 customers and the attorney general's office.

25           Q.       A revenue requirement counteroffer?

1           A.       Yes.

2           Q.       Where was the discussion, if any, on  
3 rate design, rate allocation at that point?

4           A.       I don't believe that there was any  
5 discussion on those issues at that point in time.  
6 Typically, the revenue requirement number is the most  
7 controversial because that's what, you know,  
8 represents the total amount of the increase. And  
9 you'd typically try to resolve that number before you  
10 get to the -- the others.

11          Q.       Going back to April 28th, what do you  
12 recall as being the proposal, how much, from LG&E/KU?

13          A.       Well, that's part of settlement  
14 discussions, and I'm hesitant to reveal any of those  
15 numbers.

16          Q.       Why is that?

17          A.       Because I think anything that is said  
18 during settlement discussions is confidential. It's  
19 expected that way by the parties.

20          Q.       All right. Let's approach this a  
21 different way. I have all the numbers because the  
22 parties have given me those numbers, but if you want  
23 to --

24          A.       If you want to give me the numbers  
25 that someone else has given you, knowing that they

1 have given you, I wouldn't have a problem in  
2 verifying that those look like the numbers.

3 Q. Fair enough. 105 million is what I'm  
4 told on April 28th.

5 A. The number from the company?

6 Q. Yes. On April 28th.

7 A. I recall a -- a much higher number.

8 Q. All right. Fair enough. Leave it at  
9 that, then, if you're uncomfortable. And then the  
10 counteroffer --

11 A. Let me say, I -- I have no -- I  
12 reviewed some notes, and prior to reviewing those  
13 notes -- you know, it's been so long ago I really had  
14 no recollection. The notes that I reviewed indicated  
15 a higher number on the 28th. Now, that isn't to  
16 say -- like I said, I don't remember whether the AG  
17 and -- or anyone else made a counteroffer on the  
18 28th, so it's possible that the higher number that I  
19 had in my notes was the first offer. There may have  
20 been a counteroffer, and LG&E and KU may have come  
21 back with the -- with the 105 -- well, let me ask you  
22 this. Did the 105, did that include gas?

23 Q. Yes.

24 A. Yes?

25 Q. Yes.

1           A.       No, the number that I had was higher.

2           Q.       All right. Numbers aren't important.  
3 You do recall a counter on April 29th from all the  
4 interveners?

5           A.       Yes.

6           Q.       Okay. Was the counter accepted?

7           A.       No.

8           Q.       All right. Were the parties still  
9 meeting in the same hearing room 2?

10          A.       Yes.

11          Q.       All the parties given the opportunity  
12 to be present on the 29th?

13          A.       Yes.

14          Q.       Okay. With regard to the  
15 conversations of the 29th, I trust --

16          A.       Now, when I say that, they were all  
17 given the opportunity. There were a number of  
18 parties -- and I can't remember if it was on the 28th  
19 or the 29th -- who said that they had faith in their  
20 fellow intervening parties and while they would want  
21 to be advised of any revenue requirement number that  
22 was ultimately settled upon, that they did not think  
23 that it was in their interest, due to the time  
24 element, to attend and participate in all of the  
25 settlement discussions that might be held.

1           Q.       All right. On the 29th, you're in  
2 hearing room 2. How long did the session on the 29th  
3 go on for?

4           A.       A memo that I -- an e-mail -- I'm  
5 sorry, an e-mail that I looked at said something  
6 about beginning at 1:00, and I assume that's when we  
7 began. And I know we went fairly late that  
8 afternoon, but how long, I couldn't say.

9           Q.       Okay. You have, obviously, a  
10 recollection of a counteroffer from the interveners  
11 being submitted. Do you remember the response from  
12 LG&E/KU on the 29th, if there was one?

13          A.       My recollection was that there was --  
14 there was discussion of the -- the counteroffer that  
15 came from KIUC and the AG. There was some discussion  
16 of specific issues. Although there was maybe 20 or  
17 25 contested issues on a dollar value basis, there  
18 was only maybe six or seven that were really  
19 significant. And I recall some discussion of those.  
20 Whether the company came back with a counter or not,  
21 I -- I really don't recall. I do recall that after  
22 much discussion the parties -- by "parties" I mean  
23 the company on one side and the interveners on the  
24 other -- seemed to be fairly far apart in their  
25 numbers, total revenue requirements. And I recall

1 speaking up and saying that based upon the  
2 significant difference in settlement offers from the  
3 parties, that it didn't appear that there would be a  
4 settlement. And I asked whether anyone thought it  
5 was -- would be helpful for the commission staff to  
6 kind of come up with a number as well as some reasons  
7 for that number and whether anyone had any objection.  
8 Those who were there -- and there may have been some  
9 folks on the phone -- all indicated that they had no  
10 objection. And I recall leaving the room with Jeff  
11 Shaw and Isaac Scott. We went into the adjoining  
12 large hearing room No. 1, and -- let me back up a  
13 little. Before we did that, I'm pretty sure that  
14 LG&E and KU did come back with a counteroffer to the  
15 AG and KIUC because I recall them conceding a number  
16 of issues for settlement purposes.

17 Q. "Them" being --

18 A. The LG&E and KU, because when -- when  
19 I left the room with the other two staff members, by  
20 that point in time there was really only a half a  
21 dozen issues that had any significant dollar value  
22 that the parties were not pretty close to agreement  
23 on. And I kind of discussed these issues with staff,  
24 and came up with basically what we thought, based  
25 upon the record at that point in time, was likely

1     that we would be recommending to the commission on  
2     those issues. And we kind of put some numbers to  
3     those issues, and we came back to the group, told  
4     them our number. And I think we had some  
5     explanations -- I can't recall the extent to which we  
6     went into details of how we came up with our number.  
7     We may have, may not have. But anyway, we had a  
8     number for the KU electric, the LG&E electric, the  
9     LG&E gas.

10                   At some point -- and I can't remember  
11     if it was then or shortly maybe the next day -- there  
12     seemed to be universal agreement with our number for  
13     the gas rate case. As far as our number that we  
14     threw out on the 29th for the two electric cases, my  
15     recollection is the company thought it was too low.  
16     The interveners probably thought it was too high, but  
17     I can't really remember.

18                   My recollection, again, is that we  
19     broke up with no -- no specific schedule to meet  
20     again, but a -- sort of a gentlemen's agreement that  
21     everyone would sleep on it and if anybody thought  
22     that it was beneficial to meet again, that we would  
23     be around and, you know, be able to schedule further  
24     discussions.

25                   Q.     Going back to the 29th, what time did



1 the parties break up for the day, to your  
2 recollection?

3 A. All I can say is I remember that we  
4 had some extensive discussions, and it went on for a  
5 number of hours. I would assume that it was 4:00 or  
6 later.

7 Q. Okay. Other than the discussions in  
8 hearing room 2, did you have any discussions with any  
9 of the interveners or LG&E/KU personnel?

10 A. Not to my recollection.

11 Q. Okay. Let's go to the events of  
12 April 30th. Were there any discussions amongst the  
13 parties about the rate cases on April the 30th?

14 A. Yes. I got a call in the morning.

15 Q. To cut to the quick of it, I'm advised  
16 that you participated by telephone.

17 A. I participated by telephone. That was  
18 in the afternoon. But there was a couple of calls in  
19 the morning, and I can't remember -- someone wanted  
20 to have a face-to-face meeting, and it was either  
21 LG&E and KU or the industrial customers, Mike Kurtz.  
22 And I can't remember. And then someone other than  
23 myself was unavailable, and I was -- my recollection  
24 is that we decided that we would have a telephone  
25 conference call, and it would be amongst LG&E/KU, the

1 industrial customers, the AG and myself.

2 And then I had some plans to be out of  
3 the office that afternoon. My recollection that I  
4 left the office -- it was after 12:00, and at that  
5 point decisions had been made amongst the parties  
6 that there would not be any further discussions. And  
7 then I called the office maybe 2:00 or so, and my  
8 secretary told me that someone had called and left a  
9 message that there was going to be a further  
10 settlement meeting, that it was going to be held at  
11 the attorney general's office, and that there was  
12 either a phone number for me to call in or I had her  
13 call and get a phone number.

14 And I -- as I said, I was out of the  
15 office and I participated on a -- by telephone call.  
16 The meeting was at the AG's office. LG&E and KU were  
17 there. I believe Mike Kurtz for the industrial  
18 customers was there. And I think it was Dennis  
19 Howard because Betsy Blackford from the attorney  
20 general's office, I think, had participated -- I know  
21 she participated Wednesday and maybe Thursday, but at  
22 the end of Thursday she announced that she was going  
23 to be out of town Friday and for the weekend. So  
24 Dennis was sitting in for her.

25 And as far as the substance of what

1 was discussed, I -- I really don't have much of a  
2 recollection. I'm sure that LG&E and KU said that  
3 if -- you know, if the other parties would give them  
4 a little more money, that they would be agreeable.  
5 And I would imagine the AG and KIUC said if -- you  
6 know, if the company will agree to a little lower  
7 number than staff threw out, that they would be  
8 agreeable.

9 But I remember conversation going on  
10 for well over an hour, almost an hour and a half. I  
11 think during part of that conversation the LG&E and  
12 KU left the room because I have a recollection of  
13 talking only with the representatives of the  
14 industrial and the attorney general's office. Other  
15 than being relatively close on the numbers --

16 Q. Again, revenue requirement number?

17 A. Revenue requirement. Yeah, other than  
18 being relatively close, I just can't remember --

19 Q. Okay. Is it fair to say you do not  
20 recall that the parties came to agreement on the --  
21 on the 30th?

22 A. That's my recollection.

23 Q. Fair enough. Now, besides that  
24 conversation, did you have any other conversations  
25 with KU/LG&E or intervener personnel?

1           A.       Not until we all got together on  
2 the -- was it the 4th of April, first day of the  
3 hearing?

4           Q.       4th of May.

5           A.       4th of May, first day of the hearing.  
6 No, there was no further discussions over the  
7 weekend. We may have -- and again, we may have left  
8 the conversation at the end of May 30th with, you  
9 know, maybe we'll get back together on the 2nd of  
10 May, but no one called and no one -- or at least they  
11 didn't call me. So I -- whether the -- whether there  
12 was any discussion amongst the parties that did not  
13 include myself or other staff, I don't know.

14          Q.       Okay. May the 4th. Did the parties  
15 continue their settlement discussions in hearing  
16 room 2 or did they go immediately to put evidence on  
17 in front of the commission? Tell me what you recall  
18 the chain of events.

19          A.       I -- I recall going on the record in  
20 the hearing, conducting some preliminaries such as  
21 were there any members of the public at the hearing  
22 who wanted to make statements regarding the pending  
23 rate applications, taking that evidence into the  
24 record, other preliminary matters, and then  
25 adjourning the hearing in order to allow the parties

1 to further discuss the issues. And we then -- the  
2 parties -- and to my recollection, including staff,  
3 went in from hearing room 1 into hearing room 2 and  
4 held some further discussions. We broke for lunch.

5 We may have held some discussions  
6 after lunch, but it -- it wasn't lengthy. The  
7 commission was concerned at that point in time that  
8 because of the number of witnesses and the issues,  
9 that we couldn't just allow the off-the-record  
10 settlement discussions to continue for an extended  
11 period because that was cutting into the time that  
12 would otherwise be left for the -- for the hearing.

13 So sometime on the afternoon of the  
14 4th of May, we went back, convened the hearing and  
15 started with witness testimony. And I think we went  
16 until about 5:00 in the hearing, and then broke the  
17 hearing until the following morning. And then the  
18 parties and staff continued after 5:00 as a group in  
19 hearing room 2 to --

20 Q. When you say "continued," continued  
21 negotiation?

22 A. Continued, yeah, further discussions.  
23 And it's my recollection that we went 10:00, 10:30  
24 that night, and that -- that at some point during  
25 those discussions there was an agreement by all of

1 the parties, including the attorney general's office,  
2 as to a revenue requirements number.

3 Q. The number I've heard statements on  
4 was \$101,400,000.

5 A. I believe that -- that's correct.

6 Q. Okay. Now, first I want to ask you  
7 about --

8 A. And that includes both the electric  
9 and the gas.

10 Q. Right. On that day, the 29th, other  
11 than conversations in the -- on the record in the  
12 hearing room or settlement --

13 A. You said the 29th.

14 Q. I'm sorry, I meant May 4th.

15 A. The 4th.

16 Q. Other than those discussions on the  
17 record in the hearing room as part of the record and  
18 settlement discussions in hearing room 2, did you  
19 have any conversations with any representatives of  
20 KU/LG&E or the interveners?

21 A. Not about any of the substance of the  
22 case. I may have passed somebody in the hall and  
23 said, "Hi, how are you, what's going on?"

24 Q. Other than salutations?

25 A. Yeah, that would -- that would have

1       been it.  Nothing of substance regarding any of the  
2       issues in the cases --

3               Q.       Now, with regard to --

4               A.       -- or any of the issues that were  
5       being discussed for settlement.

6               Q.       Okay.  With regard to the agreement  
7       that you believe was reached on May the 4th, what  
8       time of the evening, was it late when agreement was  
9       reached?

10              A.       My recollection, yes, it was quite  
11       late.

12              Q.       With regard to the attorney general,  
13       did you have a recognition that his representatives,  
14       Ms. Blackford and Mr. Howard, were communicating with  
15       attorney general personnel off campus, as it were, or  
16       were they operating on their own, or did you have a  
17       sense of it either way?

18              A.       It was my understanding that -- that  
19       they had to get final approval from individuals  
20       higher up in their office, but it was also -- it was  
21       my understanding that they had gotten some approval,  
22       I think, that evening, but it still had to get some  
23       further approval.

24              Q.       Are you suggesting that --

25              A.       And I know that the AG's witnesses

1     were -- or at least most of them, you know, had been  
2     there that day for the commencement of the hearing.  
3     And I assumed, and I think everyone assumed that, you  
4     know -- that the AG was consulting with his own  
5     witnesses as part of the settlement discussions and  
6     as they -- as they proceeded.

7             Q.       Did you believe that the attorney  
8     general's representatives on May 4th had authority to  
9     tentatively agree to the \$101,400,000 number?

10            A.       Well, you say "tentatively agree."  
11     You know, I think that the -- the AG's representation  
12     was that, you know, I think that this is a reasonable  
13     number, and I will certainly do my best to -- to  
14     recommend and try to convince my superiors that this  
15     number should be accepted. But I think it was known  
16     that they -- the representatives at the settlement  
17     discussions did not have ultimate authority of  
18     accepting the number.

19            Q.       Okay. Parties leave on May the 4th.  
20     They resume again on May the 5th.

21            A.       Yes. My recollection, we made an  
22     announcement at 9:00 when the hearing was supposed to  
23     reconvene. The announcement was that -- and it was I  
24     think off the record, but I've never looked to see --  
25     that the parties were still discussing settlement and



1 that the hearing would be delayed for some period of  
2 time. The lawyers and some of the witnesses then  
3 went back into hearing room 2.

4 My recollection is that LG&E and KU  
5 had put together a draft settlement agreement. In  
6 fact, I think they actually put together such an  
7 agreement on -- on the evening of May 4th and gave it  
8 to all of the participants. And when we started back  
9 in the settlement discussion the morning of May 5th,  
10 what we were doing was going page by page and line by  
11 line through that settlement document.

12 Q. Were the attorney general's  
13 representatives there during that process?

14 A. Betsy Blackford was. My recollection,  
15 Dennis Howard was not. And after maybe 45 minutes or  
16 something of going through that process, one of  
17 the -- either a secretary or someone from the  
18 commission who worked at the front desk, came back  
19 and gave Betsy a message -- you know, a written note.  
20 And she read it and said, "I've been informed that I  
21 can no longer participate in this process, and that's  
22 all I can say at this point in time." And she just  
23 kind of got up and left. And I don't think we ever  
24 got any explanation from her or Dennis Howard, who  
25 had been working with her, you know, as to exactly

1     what happened.

2                     I think the -- the talk in the hall  
3     was that whoever had initially given approval of the  
4     revenue requirement number either reversed themselves  
5     or the initial approval had come from someone other  
6     than the attorney general himself and that it was the  
7     attorney general that ultimately reversed the  
8     individual who had given the initial approval.

9                     Q.       You had a clear understanding that  
10    there was some initial approval given the night  
11    before?

12                    A.       That's my recollection.

13                    Q.       Fair enough.   Okay.   Now, after  
14    Ms. Blackford left the room, did the parties go back  
15    on the record and have evidence produced before the  
16    commission on May 5th?

17                    A.       Yes.

18                    Q.       Okay.   And was that the process --

19                    A.       It may not have been until the  
20    afternoon because at one point in time -- it may have  
21    been the 5th -- when the -- there was a statement  
22    made that the attorney general himself was going to  
23    be coming to the hearing, or coming to the settlement  
24    discussion.   And we waited for him, waited quite some  
25    time.   And then he -- he finally got to the

1 commission, and there was a lot of press people. And  
2 from the time that he got to the front door of the  
3 commission until he worked his way back to the  
4 hearing room No. 2 was probably another 30 to  
5 45 minutes because he was giving interviews to the  
6 press.

7 My recollection, when he came into the  
8 hearing room 2, he did not sit at the table where the  
9 counsels who were actively engaged in the discussions  
10 were sitting. He kind of sat in the -- a couple of  
11 rows back in the audience, and I believe one of the  
12 issues at that time may have been under discussion  
13 was the home heating assistance fund.

14 Q. Okay. For low income?

15 A. Low income, yes.

16 Q. Okay. How long would you say he sat  
17 in hearing room 2?

18 A. I think it was less than an hour. It  
19 may have been 45 minutes. And then I remember the  
20 hearing starting, and he sat in the audience of the  
21 hearing for a period of time. Did not enter an  
22 appearance on the record. He did not say anything.

23 Q. Okay. Was testimony taken until about  
24 5:00?

25 A. Best of my recollection, yes.

1 Q. Did the parties negotiate that  
2 evening, May 5th?

3 A. Yes. And again, it went quite late,  
4 maybe sometime 10:00 to 11:00.

5 Q. Were the attorney general's  
6 representatives part of the interveners for the  
7 negotiation period on May the 5th after 5:00?

8 A. I'm sorry, were they part of those  
9 negotiations?

10 Q. Yes.

11 A. Yes.

12 Q. So they continued to stay.

13 A. Yes. And at some point -- and I think  
14 it was the evening of the 5th when the discussions  
15 turned from the revenue requirement number to the  
16 other issues such as rate design and revenue  
17 allocation.

18 Q. Okay.

19 A. And there was an agreement reached, as  
20 I recall, amongst all parties, including the AG, on  
21 the rate design and revenue allocation issues.

22 Q. With regard to May the 5th, did you  
23 have any communication with either representatives of  
24 LG&E/KU or the interveners other than  
25 communication -- settlement discussions in hearing

1 room 2 or representations made on the record in the  
2 case?

3 A. No, not to my recollection.

4 Q. Okay. May the 6th, the next day, do  
5 you have a recollection of having come to the Public  
6 Service Commission and that the hearings began right  
7 away that day?

8 A. Yes.

9 Q. Okay. And did you make a statement on  
10 the record on May the 6th as to a certain radio  
11 interview that you'd heard?

12 A. Yes.

13 Q. Okay. Tell me what you recall of that  
14 state of events.

15 A. I recall waking up to a clock radio  
16 that had NPR, National Public Radio. And there  
17 was -- part of the news report was a -- an interview  
18 by the attorney general who gave a statement that he  
19 thought that the settlement agreement that had been  
20 negotiated in the LG&E and KU rate cases was tainted  
21 by collusion and ex parte contacts, or maybe just --  
22 I know he used the word "collusion." Whether he said  
23 "ex parte contacts," I don't recall.

24 But I remember at the commencement of  
25 the hearing on May 6th making a statement to the

1 effect that I had heard that on the radio, and  
2 whatever is in the transcript accurately reflects  
3 what I heard at that point in time. And there was  
4 then a discussion by the commission and the -- the  
5 parties regarding that comment that I had heard.

6 Q. It's my understanding that the  
7 chairman went around the room and requested if anyone  
8 had any information of any ex parte, collusive or  
9 inappropriate behavior had taken place, and that  
10 everyone responded no, they had not.

11 A. That's correct.

12 Q. Including the attorney general's  
13 representatives.

14 A. That's correct.

15 Q. Okay. Fair enough.

16 A. And he further said that he was kind  
17 of surprised, taken aback by the comment, that he did  
18 not know anything about it.

19 Q. Fair enough. Did the parties do any  
20 negotiation in hearing room 2 on May the 6th, or was  
21 it all on-the-record evidence being submitted into  
22 the record?

23 A. I think it was all on-the-record  
24 evidence. I think that by the conclusion of the  
25 evening of the 5th, that it was clear that the AG was

1 not going to agree to the revenue requirements number  
2 for the LG&E electric or the KU electric. It was, I  
3 think, clear that they had agreed to the LG&E gas.  
4 And I think it was clear that they had agreed to the  
5 rate design and revenue allocation and I think almost  
6 everything else, so that the only issues that were  
7 left to be adjudicated by the commission were the  
8 revenue requirements for the LG&E electric and KU  
9 electric. And we just, from the morning of the 6th,  
10 proceeded to take the witnesses who were testifying  
11 on those issues.

12 Q. Okay. Do you recall any settlement  
13 discussions after 5:00 on May the 6th?

14 A. I -- I do not recall. Now, I could be  
15 mistaken in that there may have been further  
16 discussions on these other issues of revenue  
17 requirements and -- revenue -- yeah, revenue  
18 requirements and the allocation of the revenues, but  
19 I -- you know, without reviewing the transcript, I --  
20 I can't remember. I remember that it -- in one  
21 morning that the settlement agreement -- well, it was  
22 termed a settlement -- partial settlement agreement  
23 and stipulation, that that was presented to the  
24 commission -- or at least it was announced that it  
25 had been reached.

1 Q. Is that May 6th?

2 A. Either on the morning of the 6th or  
3 the 7th.

4 Q. All right.

5 A. That's why -- I was thinking it was  
6 the morning of the of the 6th, which is what leads me  
7 to think that at the end of the day of the 6th that  
8 there was no further settlement discussions. But I  
9 could be off --

10 Q. You mentioned the 7th.

11 A. -- by a day.

12 Q. Are you sure the parties met on the  
13 7th?

14 A. I was thinking that the hearing  
15 continued on the 7th, but I might be mistaken.

16 Q. There was a day the following  
17 week, May 12th.

18 A. Right.

19 Q. Do you have a recollection that there  
20 was --

21 A. The May 12th session, I believe, was  
22 scheduled specifically for the formal introduction  
23 into the record of this partial settlement agreement  
24 and stipulation, and for the presentation by the  
25 parties of witnesses to testify in support of that



1 document. I guess I was thinking the hearing had  
2 originally been scheduled to go from May 4th through  
3 7th, and I was thinking that it continued, but it may  
4 have concluded on the 6th.

5 Q. On May the 6th, other than in the  
6 hearing room and/or settlement room, hearing room 2,  
7 did you have any discussions with any representatives  
8 of KU/LG&E or the interveners about the case?

9 A. Not about any of the substance of the  
10 case, no.

11 Q. Okay. And I take it when you say not  
12 about the substance, the conversations would have  
13 been salutations, et cetera?

14 A. Yes.

15 Q. Okay. With regard to May the 12th,  
16 let me ask you the same question. Any conversations  
17 with any members of LG&E/KU other than salutations or  
18 on the record themselves?

19 A. No.

20 Q. And same question for the interveners.

21 A. No, no conversations.

22 Q. Between May the 12th and the date of  
23 ruling by the commissioners, which I will represent  
24 to you is June the 30th, did you have any  
25 conversations with either KU/LG&E representatives or

1 the interveners about the case?

2 A. Not about the substance of the case,  
3 no.

4 Q. Okay. Are you referring to  
5 salutations and other --

6 A. Yes.

7 Q. -- conversations you may have had?

8 A. Yes.

9 (DEPOSITION EXHIBIT NO. 1 MARKED)

10 Q. Okay. Let me show you a document  
11 which I'm sure you have seen before. This is the  
12 Public Service Commission Employee Information  
13 Handbook. I wanted you to take a look at page 20,  
14 and specifically ex parte communication. And you had  
15 made a reference to the policy of the Public Service  
16 Commission earlier in your statement as to ex parte  
17 communication. Do you recall that?

18 A. Yes.

19 Q. Is this particular statement of policy  
20 contained on page 20 the policy you were referring  
21 to?

22 A. Yes.

23 Q. Okay.

24 A. But I -- I mean, I'm not sure when  
25 we -- we, the commission, first had a written policy.

1 Q. This particular rendition is '94.

2 A. But I think we -- we had an unwritten  
3 policy -- probably dates back to the time that I  
4 started here 24 years ago.

5 Q. Okay. And just in passing, do I take  
6 it that ex parte communication is simply not an  
7 allowable function here at the Public Service  
8 Commission? Would you agree --

9 A. That's correct.

10 Q. -- with that statement?

11 And that there is a clear  
12 understanding imparted to the employees that ex parte  
13 communication is simply not allowable?

14 A. That's correct.

15 Q. Okay. Now, during the course of these  
16 hearings, did you yourself ever witness any behavior  
17 which you thought was violative of the ex parte  
18 policy or what you subjectively would have referred  
19 to as collusive or inappropriate behavior on the part  
20 of the staff?

21 A. No.

22 Q. Okay. And did you have or did you  
23 witness any behavior which you thought was violative  
24 of the ex parte policy or collusive or inappropriate  
25 behavior on behalf of the commission members?

1                   A.       No.

2                               MR. GOLDBERG:   Okay.   That's all I  
3 have.   Thank you.

4

5                               (STATEMENT CONCLUDED AT 1:00 P.M.)

6                               \*       \*       \*

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1 STATE OF KENTUCKY        )  
2 COUNTY OF JEFFERSON    )  
3                                SS:

4                   I, ELLEN L. COULTER, Notary Public,  
5 State of Kentucky at Large, hereby certify that the  
6 foregoing sworn statement was taken at the time and  
7 place stated in the caption; that the appearances  
8 were as set forth in the caption; that prior to  
9 giving testimony the witness was first duly sworn by  
10 me; that said testimony was taken down by me in  
11 stenographic notes and thereafter reduced under my  
12 supervision to the foregoing typewritten pages and  
13 that said typewritten transcript is a true, accurate  
14 and complete record of my stenographic notes so  
15 taken.

16                   I further certify that I am not  
17 related by blood or marriage to any of the parties  
18 hereto and that I have no interest in the outcome of  
19 captioned case.

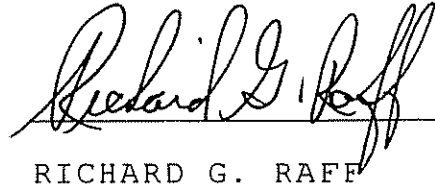
20                   My commission as Notary Public expires  
21 November 5, 2007.

22                   Given under my hand this the 24th  
23 day of August, 2005, at Louisville,  
24 Kentucky.


25  


ELLEN L. COULTER  
NOTARY PUBLIC

1 I, the undersigned, RICHARD G. RAFF, do  
2 hereby certify that I have read the foregoing sworn  
3 statement, and that, to the best of my knowledge,  
4 said sworn statement is true and accurate, with the  
5 exception of the corrections, if any, listed on the  
6 errata sheet.

7   
8  
9 RICHARD G. RAFF

10  
11 Subscribed and sworn to before me this 4th  
12 day of October, 2005.

13  
14  
15   
16 NOTARY PUBLIC  
17 Kentucky At Large  
18 My Commission expires 7-19-06

19 My commission expires \_\_\_\_\_  
20  
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25

COULTER REPORTING, LLC  
101 EAST KENTUCKY STREET, SUITE 200  
LOUISVILLE, KY 40203

ERRATA SHEET

NAME Richard G. Raft DATE OF DEPOSITION August 12, 2005

After having read my deposition, I wish to make the following changes:

Page 36 Line 9

Change MAY 2nd To MAY 3rd

Reason for change wrong date, MAY 2nd was a Sunday, reference was to 1st work day

Page \_\_\_\_\_ Line \_\_\_\_\_ after April 30 discussions. (RG)

Change \_\_\_\_\_

Reason for change \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_

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Reason for change \_\_\_\_\_

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EMPLOYEE INFORMATION HANDBOOK

**EXHIBIT**

BAFF  
8-12-05 /



The contents of this Employee Information Handbook reflect the current policies and procedures in effect at the PSC at the time of its printing.

Amendments to personnel law, regulations and policies may modify or supercede all statements in this information handbook.

It is the policy of the Public Service Commission to affirm equal opportunity for employment and advancement to all qualified persons without regard to race, color, religion, national origin, disability, sex, age, or sexual orientation.

Printed with State Funds

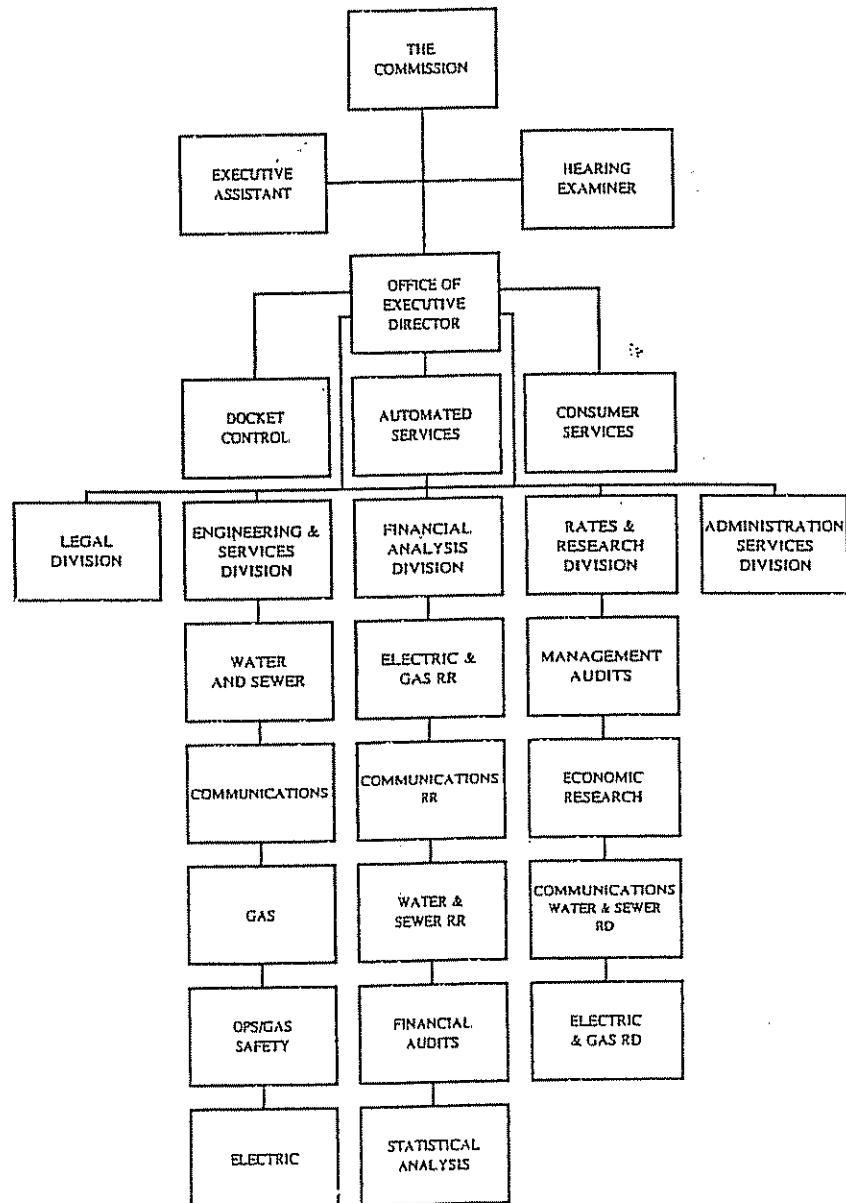
Effective 10-1-93

# PSC EMPLOYEE HANDBOOK

## TABLE OF CONTENTS

Introduction	3
Affirmative Action Policy	4
Americans with Disabilities Act (ADA)	4
Sexual Harassment Policy	4
Vacancies	5
Probationary Period	5
Transfers	5
Promotions	6
Reclassifications	6
Hours of Work	6
Training	7
Performance Evaluations	7
Job Classification	7
Compensation (Pay) System	7
Paychecks	8
Resignation	8
Retirement	8
Deferred Compensation	9
U. S. Savings Bonds	10
Credit Unions	10
Workers' Compensation	10
Unemployment Insurance	10
Agency Leave Procedures	11
Family and Medical Leave Act of 1993 (FMLA)	11
Holidays	12
Smoking Policy	12
Health Insurance	12
Life Insurance	13
Other Insurance	13
Commonwealth Choice	13
Kentucky Employment Assistance Program (KEAP)	14
Drugfree Workplace	14
Health and Safety	14
Disciplinary Action	15
Grievances	15
Misuse of Facilities and Equipment	16
Professional Conduct and Ethical Responsibilities	17
A. Adverse Pecuniary Interest	17
B. Gifts and Favors	18
C. Representing Non-State Interests	19
D. Misuse of Information	19
E. Outside Employment	19
F. Post-PSC Employment	19
G. Improper Ex Parte Communication	20
H. Executive Agency Lobbyists	21

# Public Service Commission Organizational Chart



# PSC INFORMATION HANDBOOK

## Introduction

The Commissioners and management team of the Kentucky Public Service Commission (PSC) recognize their employees as their most valuable asset. This booklet has been prepared to help employees learn about their commission, its structure and functions, and some of the many facets of the employment relationship into which they have entered. In referring to employees, "he" shall mean male or female.

Questions concerning employment should be directed to your immediate supervisor, or to your agency Personnel Administrator.

The Public Service Commission is an independent administrative body established by the Legislature in 1934 with quasi-legislative and quasi-judicial duties.

The Commission regulates intrastate rates and services of investor-owned electric, natural gas, telephone, water and sewage utilities, rural electric and telephone cooperatives, and water districts and associations. The Commission performs its regulatory functions through written orders following adjudicative and rulemaking procedures outlined in Chapter 278 of the Kentucky Revised Statutes and administrative regulations promulgated by the Commission in Title 807 of the Kentucky Administrative Regulations.

The Commission's goal is to ensure that every utility within its jurisdiction charges fair, just and reasonable rates for the services rendered and that those services are safe, adequate, efficient and reasonable.

The PSC consists of three (3) members appointed by the Governor with the advice and consent of the Senate. Commissioners are appointed for staggered four year terms. Appointments run from July 1 to June 30, with each commissioner staying in the office until his successor is sworn into office. The Governor designates one commissioner to act as Chairman and Chief Executive Officer and a second commissioner to serve as Vice Chairman and act for the Chairman in the latter's absence.

The PSC is divided into the following units: General Counsel (Legal), Engineering, Rates and Research, Financial Analysis, and Administrative Services. The Commission appoints an Executive Director, to serve at its pleasure, and to act as Chief Administrative Officer directing day-to-day operation of the Commission.

## **Affirmative Action Policy**

The Commission is committed to the law of the Commonwealth in establishing a work place free from the injustices of discrimination. It is the policy of the Commission to affirm equal opportunity for employment and advancement to all qualified persons without regard to race, color, religion, national origin, disability, sex, age, or sexual orientation. Any employee who believes he has been subjected to discriminatory treatment in the workplace has the responsibility immediately to bring the problem to the attention of the agency Personnel Administrator.

## **The Americans With Disabilities Act of 1990 (ADA)**

The Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., is a federal law that requires that public facilities and programs, when viewed in their entirety, be accessible to persons with all types of disabilities. The ADA also makes it unlawful to discriminate against a qualified person with a disability in any aspect of employment. The ADA applies to Commission employment practices and the terms, conditions and privileges of employment. The ADA protects qualified persons with a disability. This includes current Commission employees, qualified applicants seeking Commission employment and citizens seeking to utilize Commission facilities and programs. Contact the agency Personnel Administrator for further information.

## **Sexual Harassment Policy**

The Commission does not tolerate sexual harassment of any kind. Sexual harassment in the workplace is a serious offense against the dignity of fellow workers and a violation of both state and federal law. Sexual harassment is viewed as misconduct and will subject any offending employee to disciplinary action up to and including dismissal. Any employee who has a complaint of sexual harassment at work by supervisors, co-workers, visitors or clients should immediately bring the problem to the attention of his supervisor, or, if the complaint involves supervisory personnel in the employee's line of command, complaints may be made to another supervisor, the agency Personnel Administrator or the Cabinet Personnel Administrator.

## Vacancies

When a vacancy occurs in the Commission, it is usual practice to attempt to fill the position from within the agency or state government through promotion or transfer. When recruiting from the outside for a merit position, a register of names is requested from the Department of Personnel for the vacant position. A selection is made from this register. The new employee serves a probationary period of six months to obtain merit status. Non-merit appointments are made by the Commission to serve at the pleasure of the Commission.

## Probationary Period

1. Initial probationary period is the period an agency observes an employee's job performance and determines to continue his employment or terminate it. The initial probationary period is six months. Employees who perform satisfactorily gain merit system status.
2. Promotional probationary period is the six months following a promotion during which the agency observes the employee's job performance. With satisfactory performance, the employee gains merit system status in the new job. If performance is not satisfactory, the employee is returned to his former position or to a position in the same job classification as the former position.

## Transfers

If an employee wishes to transfer to another position or location within the Commission, he should submit the request in writing to his supervisor. If an employee wishes to transfer to another state agency, it is his responsibility to locate the new position. The Commission and the hiring agency will coordinate the transfer of Personnel records. The employee is responsible for notifying his immediate supervisor and negotiating a transfer date.

## Promotions

Promotion is a change from a position in one class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility. Employees who are promoted are required to serve a **promotional probationary period**. Employees who are promoted retain their status in the class from which they are promoted; if an employee does not successfully complete the promotional probation he must revert to a position in his former class. An employee who is promoted receives a salary increase of at least five percent or advances to the minimum of the grade for the new position (whichever is greater). An agency may give a five percent promotional increase to an employee who successfully completes promotional probation. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the agency, with the prior written approval of the Commissioner of Personnel, may grant upon promotion a ten percent or fifteen percent salary increase over the employee's previous salary.

## Reclassifications

A reclassification occurs when an employee is given a different job classification because of a **material and permanent** change in his duties or responsibilities. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five percent except that in no case shall the employee's salary be below the minimum for the new pay grade. An employee placed in a lower pay grade through reclassification shall receive the same salary he received before reclassification.

## Hours of Work

Full-time state employees are required to work 7.5 hours per day. Part-time and hourly employees shall be scheduled to work hours in accordance with the needs of the position. The normal work hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday, unless flextime has been approved by the Executive Director. The employee shall not be scheduled to begin work earlier than 7:30 a.m. nor later than 8:30 a.m. Habitual tardiness or excessive absenteeism from work stations shall constitute grounds for disciplinary action.

## Training

The Commission encourages all employees interested in career development to take advantage of courses offered at the Governmental Services Center at Kentucky State University. The Commission also encourages job enrichment through work-related workshops and seminars of a technical nature to improve job efficiency and effectiveness if within the budgetary allowance.

## Performance Evaluations

Performance evaluations enable both the supervisor and employee to determine whether the employee is meeting the requirements of the job. Performance evaluations, updated job descriptions, standards and goals are to be completed for merit employees on June 30 (mid-year) and December 31 (year-end) of each year. An employee is not eligible to begin the evaluation process unless his probationary period is completed by January 1 of the year for which he is to be evaluated.

## Job Classification

The goal of the classification process is to maintain a system that accurately matches what the employee does with how the employee is classified. Each employee has a detailed position description (PD) of his job duties. The PD is developed and monitored as a joint effort of both the employee and his supervisor.

## Compensation (Pay) System

When jobs are classified, they are evaluated on thirteen (13) factors and compared to jobs in their proposed class. The following factors are included in the evaluation: minimum education requirement; minimum experience requirement; supervisory responsibilities; responsibilities for following, interpreting, enforcing, or developing policies or procedures; responsibility for materials and supplies; authority to handle and spend money; responsibility for personal contacts; responsibility for records and reports; responsibility for machinery and equipment; types of mental skills required; types of mental demands required; types of physical demands; and types of working conditions. This evaluation provides a basis for internal ranking of classes. In addition, the Department of Personnel maintains information about the salaries other employers pay for similar jobs. Using all available information, each class is assigned a pay range on the salary schedule.



## Paychecks

All payroll checks are paid two weeks in arrears. For example, a new employee will not receive his first paycheck for four weeks. If the appointment date is September 1, he will receive his first check on September 30 for the September 1 - 15 pay period. Payday is always on the 15th and 30th of each month, unless payday falls on a Saturday or Sunday, in which case paychecks are delivered on the preceding Friday.

## Resignation

An employee who desires to terminate his service with the state shall submit a written resignation to the agency. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

## Retirement

All salaried employees and hourly Commission employees working an average of 100 hours a month are members of the Kentucky Employees Retirement System and contribute 5% of their base pay to the retirement system. The state contributes 7.65% of the employee's base salary to his retirement account. The following are benefits provided by the Retirement System:

### Normal Retirement

1. A member who has attained age 65 and has acquired at least 48 months of service credit (12 months must be current service) is eligible for an annual retirement benefit as determined by the following formula:

YEARS OF SERVICE X 1.97% X FINAL COMPENSATION\*

EXAMPLE: A member has 20 years of service and final compensation of \$15,000.

$$20 \times 1.97 = 39.4\%$$

$$39.4\% \text{ of } \$15,000 = \$5,910 \text{ annual payment}$$

$$\$5,910 \text{ divided by } 12 = \$492.50 \text{ monthly payment}$$

\*Final compensation is the average annual salary earned during the five fiscal years when the member's salary was highest.

2. A member who has attained age 65 but has less than 48 months of service is eligible for a monthly benefit equal to the actuarial equivalent of twice the member's accumulated contributions. This amount must be calculated by the retirement system.

#### Early Retirement

1. A member may elect early retirement at any age with no decrease in benefits if the member has 27 years of service credit. At least 15 years of the service must be current service.
2. A member may choose early retirement if he is age 55 or older and has at least 60 months of service credit.
3. A member may also choose early retirement if he is under age 55, and has at least 25 years of service, 15 of which must be current service. The benefits are calculated the same as for normal retirement and are reduced 5% for each year of service credit under 27.
4. Under early retirement, the benefit is calculated the same as under normal retirement, except that benefits are reduced depending on the member's age or years of service.

#### Disability Retirement

A member who has acquired 60 months of service credit (12 months must be current service) is eligible for a monthly disability benefit if he should become disabled while actively contributing to the retirement system. Application for disability benefits must be made within 12 months of termination of employment. Disability benefits are calculated in the same manner as Normal Retirement benefits except that additional years of service credit may be added to the member's account and years of service at the time of disability.

Any questions should be referred to the Kentucky Employees Retirement System office at (502) 564-4646.

### **Deferred Compensation**

All Kentucky state government employees may participate in the Deferred Compensation program. Deferred Compensation lets the employee set aside income from his paycheck for retirement. Money set aside for Deferred Compensation is

automatically payroll deducted twice each month. The employee pays no state or federal income tax on the money deferred until he begins receiving benefit payments at retirement or early retirement, when he may be in a lower tax bracket. For additional information, contact the Kentucky Public Employees Deferred Compensation System at 564-7240.

## U.S. Savings Bonds

Savings Bonds are available to all employees through payroll deduction. Employees should contact the agency Personnel Administrator for forms and information.

## Credit Unions

A state employee may join the Commonwealth Credit Union or the Kentucky Employees Credit Union. Each offers a wide range of financial services, including secured and unsecured loans, savings plans, and payroll deductions. Information may be obtained by calling:

Commonwealth Credit Union	(502) 564-4775
Kentucky Employees Credit Union	(502) 564-5597

## Workers' Compensation

All Commission employees are protected by Workers' Compensation. If an employee is injured at work, he should advise his supervisor immediately. Reporting should be coordinated through the Personnel Administrator's office. Failure to report injuries to the supervisor within 24 hours may jeopardize an employee's entitlement to Workers' Compensation benefits.

## Unemployment Insurance

All employees of the Commission (except Commissioners) are eligible for unemployment compensation under certain circumstances. Direct any questions to the agency Personnel Administrator.

## Agency Leave Procedures

Accumulation and use of the following leave are controlled by 101 KAR 2:100:

Annual	Voting
Sick	Blood Donation
Compensatory	Military
Court	

## Family and Medical Leave Act of 1993 (FMLA)

FMLA, 29 U.S.C. §2601 et seq., requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Unpaid leave must be granted for any of the following reasons:

- > to care for the employee's child after birth, or after placement of a child with the employee for adoption or foster care;
- > to care for the employee's spouse, child, or parent, who has a serious health condition; or
- > for a serious health condition that makes the employee unable to perform his job.

### Job Benefits and Protection:

- > For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- > Return from FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

For additional information regarding FMLA, please contact the agency Personnel Administrator.

## Holidays for State Personnel

State offices shall be closed and state employees shall be given a holiday on the following days:

- (a) The 1st day of January plus one extra day;
- (b) The 3rd Monday in February;
- (c) Good Friday, one-half day;
- (d) The last Monday in May;
- (e) The 4th day of July;
- (f) The 1st Monday in September;
- (g) Presidential election day as required under KRS 2.190;
- (h) The 4th Thursday in November plus one extra day;
- (i) The 25th day of December plus one extra day.

## Smoking Policy

To provide a workplace that respects the rights of non-smokers, while ensuring smokers are not deprived of their rights, smoking is permitted only in specifically designated areas. This policy is in effect at all times.

## Health Insurance

An employee has the option of receiving coverage through the carrier holding the state health insurance contract or if he lives or works within a defined service area, he may choose coverage through one of the health maintenance organizations (HMO's). Health coverage becomes effective the first day of the second month following the date of employment. When his employment terminates, the employee remains covered for the following month by the state's contributions.

The Retirement System provides hospital/medical insurance or Health Maintenance Organization coverage for recipients of a retirement benefit. Participation in these plans is optional and a recipient may purchase, at his own expense, coverage for his beneficiaries and dependents. The cost of coverage for the retirement system member may be partly paid by the retirement system depending on the number of years of service that the member accumulated. Percentages of the premium that will be paid by the system are as follows:

Less than 4 years	0%
4 - 9	25%
10 - 14	50%
15 - 19	75%
20 or more years	100%

## Life Insurance

All eligible employees receive term life insurance coverage paid for by the state in the amount of \$6,560.00. To be eligible for life insurance benefits, a state employee must be a contributing member to one of the state administered retirement systems. The insurance becomes effective the first day of the second month following the date of employment. As with health insurance coverage, an employee will be covered by the state term life insurance one month following his separation from state service. State employees also have the option of purchasing additional life insurance. See the agency Personnel Administrator for additional information.

## Other Insurance

Several dental insurance options are available for state employees through payroll deduction. The state does not contribute toward any of these premiums. Many premiums can be payroll deducted. See the agency Personnel Administrator for additional information.

## Commonwealth Choice

Commonwealth Choice is a tax-saving opportunity that can benefit employees and their families who have dependent day care or out-of-pocket healthcare expenses. **Commonwealth Choice is not an insurance plan.** This optional benefit was implemented by the Kentucky Department of Personnel to help reduce taxes and increase spendable income. The cost-saving advantage of the plan is simple: any eligible dependent care and health care expenses paid through the plan are tax free. No federal or state income tax or Social Security tax on the money used to pay these eligible expenses is owed. Any full-time or permanent part-time, active state government employee who is eligible for state-sponsored health insurance coverage and will have completed one full year of continuous service by December 31 of a given year, can enroll in this tax-saving plan. For additional information on Commonwealth Choice, contact the agency Personnel Administrator.

## Kentucky Employee Assistance Program (KEAP)

The Kentucky Employee Assistance Program (KEAP) is dedicated to helping employees find solutions to personal problems that may hinder effectiveness at work. Problems concerning marital, family, or emotional distress, alcoholism and drug abuse, financial or legal difficulties, or even medical problems can seriously diminish an individual's job performance. As a progressive employer, the Commonwealth of Kentucky recognizes that there are positive, workable solutions to many of these problems which trouble employees. All state employees and their families are eligible for KEAP services, and there is no cost for its information or referral services. All contact with KEAP is strictly confidential; any personal information disclosed will be kept confidential to the full extent permitted by state and federal law.

## Drugfree Workplace

The Drug Free Workplace Act of 1988, 41 U.S.C. §701 et. seq., provides that recipients of federal grants shall inform their employees that the unlawful manufacture, distribution, dispensation, possession, or use of alcohol and other controlled drugs in any designated workplace is prohibited. Conviction for such conduct may subject the employee to appropriate disciplinary action under state law, up to and including dismissal. The state may, in lieu of disciplinary personnel action, require an employee convicted of such conduct to participate in a drug abuse assistance or rehabilitation program.

## Health and Safety

The Commission adheres to federal and state laws established to guarantee the health and safety of all employees in the workplace. Employees must follow the safety rules and procedures pertaining to their work unit. They must also maintain a personal commitment to exercising safe work habits and practices. For further information regarding health and safety in the workplace, please contact the agency Safety Coordinator.

## Disciplinary Action

Supervisors are responsible for disciplining employees for just cause including conduct while on or off duty which may be prejudicial or detrimental to the Commonwealth or otherwise affect adversely the confidence of the public in the integrity of the Commission. Discipline may range from written reprimand to suspension or dismissal from state service. If an employee disagrees with any discipline received, he may appeal the action. The steps outlining these procedures are described in the Grievances Section.

## Grievances

A grievance is a complaint filed by an employee which concerns some aspect of his employment. A grievance must be filed within thirty (30) days of the date of the action complained of or the date upon which the employee, exercising due diligence, became aware of the action.

### Procedures

1. A grievance shall be filed with the employee's immediate supervisor.
2. The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.
3. When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age (forty (40) or over), the supervisor shall immediately notify the agency Personnel Administrator in compliance with affirmative action requirements.
4. Interviews to evaluate or investigate the grievance held with the complainant or other employees shall not require the use of leave time. For interviews held outside of normal working hours, compensatory time shall be granted.



5. All parties may have a representative present at each step of the grievance procedure.

To obtain additional information, contact the agency Personnel Administrator.

## Misuse of Facilities or Equipment

No employee shall use any equipment, supplies, or properties of the Commonwealth for other than officially designated purposes. Any questions in this area should be directed to the employee's immediate supervisor.

Telephones are to be used for state business. If it is necessary for employees to make personal long-distance calls, they shall reimburse the state for personal calls in cash or by personal check payable to Kentucky State Treasurer.

## PROFESSIONAL CONDUCT AND ETHICAL RESPONSIBILITIES

Employees of the Commission work for the benefit of the people of the Commonwealth of Kentucky. As public servants, employees are bound to adhere faithfully to standards of professional and ethical conduct. Employees represent the Commission and are expected to conduct themselves in a manner which will inspire the confidence, trust, and respect of the public.

Principles of ethical behavior are based on the belief that public servants must be independent and impartial; government policy and decisions must be made through established processes; public servants must not use public office to obtain private benefits; and the public should be able to have confidence in the integrity of its government. KRS 11A.005. The Commission requires its employees to avoid conflicts of interest, improper ex parte communications, and participation in activities which present the appearance of impropriety.

The following guidelines are set forth to illuminate areas of concern:

### A. Adverse Pecuniary Interest

Commissioners are statutorily prohibited from holding an official position or owning stocks, bonds, or any other pecuniary interest in a utility. KRS 278.060(2). The Commission has adopted the same prohibition for its staff. The Commission has determined that participation in an investment plan where utility stocks or bonds are purchased as part of a total portfolio and where the Commission staff member has no control over the company chosen for investment (such as a mutual fund), does not constitute a violation of this prohibition. Any staff member who is in violation of this policy shall immediately disclose that fact to the Executive Director.

All employees are subject to the provisions of the Kentucky Model Procurement Act ("Act") which detail prohibited conflicts of interest for public officers and employees. An employee cannot be interested, either directly or indirectly, in any contract in which he may be called to act or vote. KRS 45A.430. Likewise, the Executive Branch Ethics Code ("Code"), applying to all employees of the Commission, prevents a public servant from acting as a representative of the state in a business transaction with himself or in any business in which he or a family member has a greater than five percent interest. KRS 11A.040(3). "Family" is defined in KRS 11A.010(4) to mean a person's "spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption:

parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister."

Another Code provision, KRS 11A.040(4), could affect employees by providing that they and their family members holding more than a five percent interest in a business cannot be parties, directly or by virtue of their partial ownership of the business, to any contract, agreement, lease, sale or purchase between that business and any state agency. For example, it is impermissible for the owner of a computer business to sell products to the Department of Human Resources if at least five percent of its shares are owned by the spouse of a Commission employee. Violation of this statute is a Class D felony.

#### **B. Gifts and Favors**

The Code provides that a public servant cannot knowingly accept compensation, other than that provided by law for public servants whose salary is paid by the Commonwealth, for the performance of any activity included in his official duties. KRS 11A.010(5). Compensation is defined as "any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another." KRS 11A.010(3).

The Executive Branch Ethics Commission has concluded that when dealing with a civic organization or other organization not comprised of entities regulated by the commission:

"an executive branch employee may accept a free meal at an event in which he is invited to participate in furtherance of his official duties, provided these tests are met:

1. The meal is an integral part of the event and the employee's role in the program occurs immediately before, during, or immediately after the meal.
2. The employee's meal is the same available to all others at the event and is consumed on the premises.

We also approve acceptance of a small token of appreciation such as a coffee mug. Public servants are encouraged to make speeches and presentations for the benefit of citizens of the Commonwealth, but public servants shall be zealous to accept nothing more than a small token of appreciation." AO 90-10.

The Executive Branch Ethics Commission states that employees involved in regulating utilities should not accept meals or beverages from those utilities or trade associations whose members are regulated utilities. AO 93-50.

The Commission prohibits its employees from accepting any item, including food or entertainment, from any employee of or executive agency lobbyist for a regulated utility. The Commission strives to avoid the public perception that an improper relationship may exist between regulated utilities and the Commission or its staff.

#### **C. Representing Non-State Interests**

No employee shall represent or act as an agent for any private interest, whether for compensation or not, in any transaction in which the state has a direct and substantial interest and which could be reasonably expected to result in a conflict between a private interest of the official or employee and his official state responsibilities.

#### **D. Misuse of Information**

The Code prohibits Commission employees from knowingly disclosing or using confidential information acquired during the course of their work. KRS 11A.040(1).

Employees should carefully and conservatively evaluate a document before providing it or describing its contents to anyone other than another Commission employee. Consult the Commission's General Counsel for assistance if you are unable to determine whether a particular document should be released.

#### **E. Outside Employment**

Members of the Commission are required by statute to devote their entire time to the duties of their offices. KRS 278.050(1). Members of the Commission's staff are not legally prohibited from having other jobs. However, employees who do seek outside employment are expected to ensure there is no conflict with their Commission duties. Employees who are unsure whether outside employment conflicts with their Commission duties should notify the Executive Director or consult the General Counsel.

#### **F. Post-Commission Employment**

The Code places three restrictions on the type of employment a public servant is permitted to accept after leaving state government:

1. A former public servant may not act as a lobbyist or lobbyist's principal for a period of one year after the date he leaves state employment or his term of office expires, whichever is later.
2. A former public servant may not represent a person in a matter before a state agency in which the former public servant was directly involved for a period of one year after the date he leaves employment or his term of office expires, whichever is later.
3. A present or former public servant may not, within six months of the termination of his state employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during his tenure. This prohibition does not apply to individuals returning to the same business, firm, occupation, or profession in which they were involved prior to state government employment. The Executive Branch Ethics Commission has indicated through its Executive Director that it considers the Commission to be "doing business" with the utilities it regulates.

**G. Improper Ex Parte Communication**

1. "Ex parte communication" means an oral or written communication which relates to the merits of a formal proceeding pending before the Commission, or which the employee reasonably anticipates will be filed with the Commission, and which is not included in the public record, without notice and opportunity for all parties or interested persons to participate. A communication relevant to the merits includes any issue of fact or law relative to the matter pending.
2. The following types of communication are not prohibited ex parte communications if such communication is reasonably limited to the matter at hand:
  - (a) Any procedural inquiry, including prefiling inquiries.
  - (b) Staff's communications when performing routine operational inspections and safety inspections not for the purpose of investigating a matter pending before the Commission.
  - (c) Staff's communications when performing management audits pursuant to KRS 278.255 and routine field audits of accounts, books, and the Commission.

- (d) Staff's communications when performing cell site field inspections.
  - (e) Staff's communications when performing field reviews or inspections for preparation of Commission staff reports to be filed in pending or anticipated rate cases.
  - (f) Staff's communications in cases without intervenors, unless the staff determines intervention is likely.
3. Commissioners or Commission staff shall not participate in any prohibited ex parte communication with any interested person regarding the merits of any formal case or proceeding pending before the Commission or a case or proceeding that the employee anticipates will be filed with the Commission. It is improper to disclose a Commission decision prior to the issuance of an Order on the matter.
  4. If an employee participates in a prohibited ex parte communication, he shall immediately disclose the relevant details of the communication to the General Counsel.

#### H. Executive Agency Lobbyists

As of September 16, 1993, any individual who is engaged to promote, oppose, or otherwise influence the outcome of an executive agency decision is considered an executive agency lobbyist and is required to register with and make certain disclosures to the Kentucky Executive Branch Ethics Commission.

An "executive agency decision" is narrowly defined to include only those agency decisions regarding the expenditure of state or agency funds with respect to the award of a contract, grant, lease, or other financial arrangement under which those funds are distributed or allocated. PSC employees are rarely involved in agency decisions affecting the disbursement or allocation of state or agency funds.

However, executive agency lobbyists are required to report on a quarterly basis all expenditures made on behalf of or financial transactions with any executive branch employee in any agency, whether or not the employee works for the agency the executive agency lobbyist was engaged to influence. All Commission employees must be aware that disclosure of expenditures and financial transactions involving them could be detrimental to the public's perception of the Commission and act accordingly.

**Kentucky Public Service Commission**  
**730 Schenkel Lane**  
**Frankfort, Kentucky 40601**  
**(502) 564-3940**  
**(502) 564-7279 fax**  
**(800) 772-4636 Public Information Hot Line**

WHEN THE PUBLIC ASKS FOR DIRECTIONS TO PUBLIC SERVICE COMMISSION:

Take I-64 to the Frankfort/Versailles exit (Exit 58). Turn off the exit onto U.S. 60 (Versailles Road) toward Frankfort. Follow U.S. 60 all the way in until you reach the intersection of U.S. 60, 460 and 421 (approximately 3 miles). As you approach the intersection, the road will widen to 5 lanes and a sign will read "Capital Plaza Complex". Continue straight through the light onto U.S. 421 (Wilkinson Boulevard) for approximately 1 mile. At the first light (at Hardee's) you will turn right onto Schenkel Lane. We are on the second block, in a two-story brick building located on the right, across from the Chrysler dealership (Frankfort Auto Sales) and right before you get to the liquor store.

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<b>commitments</b> [1] 19/19 <b>communicated</b> [1] 12/13 <b>communicating</b> [1] 39/14 <b>communication</b> [13] 10/16 11/7 11/9	<b>complaint</b> [4] 9/18 9/19 10/8 10/24 <b>complete</b> [1] 53/9 <b>complied</b> [2] 5/17 5/19 <b>conceding</b> [1] 31/15 <b>concerned</b> [1] 37/7 <b>concerns</b> [1] 24/14 <b>concluded</b> [3] 25/20 49/4 52/5 <b>conclusion</b> [1] 46/24 <b>concurred</b> [1] 18/16 <b>condition</b> [1] 8/23 <b>CONDITIONS</b> [2] 1/6 1/11 <b>condone</b> [1] 15/1 <b>conducting</b> [1] 36/20 <b>conference</b> [10] 13/3 18/12 18/21 19/1 20/8 20/9 21/3 21/11 24/9 33/25 <b>confidential</b> [1] 27/18 <b>conjunction</b> [1] 13/9 <b>consider</b> [1] 16/12 <b>consolidated</b> [2] 9/21 9/22 <b>consolidation</b> [1] 10/12 <b>construction</b> [1] 4/6 <b>consulting</b> [1] 40/4 <b>contact</b> [1] 14/25 <b>contacting</b> [1] 8/7 <b>contacts</b> [5] 17/11 18/5 18/23 45/21 45/23 <b>contained</b> [2] 21/25 50/20 <b>contested</b> [2] 22/3 30/17 <b>continue</b> [2] 36/15 37/10 <b>continued</b> [8] 5/5 37/18 37/20 37/20 37/22 44/12 48/15 49/3 <b>continued --</b> [1] 5/5 <b>controversial</b> [1] 27/7 <b>convened</b> [1] 37/14 <b>conversation</b> [11] 9/3 10/21 12/20 15/2 16/24 18/18 24/7 35/9 35/11 35/24 36/8 <b>conversations</b> [16] 22/24 23/2 23/4 23/25 24/24 25/4 25/18 29/15 35/24 38/11 38/19 49/12 49/16 49/21 49/25 50/7 <b>convince</b> [2] 24/11 40/14 <b>coordinate</b> [1] 13/13 <b>copies</b> [1] 5/21 <b>copy</b> [1] 21/5 <b>correct</b> [7] 6/18 6/19 38/5 46/11 46/14 51/9 51/14 <b>could</b> [5] 8/17 19/15 19/16 47/14 48/9 <b>could --</b> [1] 19/15 <b>couldn't</b> [3] 10/5 30/8 37/9 <b>COULTER</b> [4] 1/21 1/21 53/4 53/18 <b>CoulterLLC</b> [1] 1/24 <b>Council</b> [1] 14/10 <b>counsel</b> [8] 2/9 4/19 4/23 5/2 5/5 5/7 5/9 8/7 <b>counsels</b> [2] 5/3 43/9 <b>counter</b> [3] 29/3 29/6 30/20 <b>counteroffer</b> [11] 23/21 26/11 26/17 26/23 26/25 28/10 28/17 28/20 30/10 30/14 31/14 <b>counteroffer --</b> [1] 28/10 <b>counteroffers</b> [1] 26/14 <b>County</b> [2] 14/2 53/2 <b>couple</b> [2] 33/18 43/10 <b>course</b> [2] 12/25 51/15 <b>court</b> [1] 4/12	<b>D</b> <b>data</b> [13] 7/8 11/14 13/11 13/13 13/16 15/22 15/25 16/3 16/20 17/5 19/10 19/14 19/23 <b>date</b> [10] 8/12 9/6 11/16 12/15 13/2 13/3 13/15 14/19 18/5 49/22 <b>dates</b> [3] 18/18 18/22 51/3 <b>day</b> [23] 3/4 15/5 15/15 19/2 20/1 20/6 21/14 21/24 22/4 25/17 25/21 32/11 33/1 36/2 36/5 38/10 40/2 45/4 45/7 48/7 48/11 48/16 53/14 <b>day --</b> [1] 32/11 <b>day's</b> [1] 19/5 <b>days</b> [4] 8/3 11/4 11/16 20/7 <b>Debra</b> [1] 5/5 <b>December</b> [5] 11/3 11/6 11/24 13/2 14/20 <b>decided</b> [1] 33/24 <b>decision</b> [1] 24/21 <b>decisions</b> [2] 24/18 34/5 <b>deem</b> [1] 5/19 <b>Defense</b> [2] 14/6 20/19 <b>delayed</b> [1] 41/1 <b>Dennis</b> [4] 34/18 34/24 41/15 41/24 <b>Department</b> [2] 14/5 20/18 <b>DEPOSITION</b> [1] 50/9 <b>describing</b> [1] 23/13 <b>design</b> [4] 27/3 44/16 44/21 47/5 <b>desk</b> [1] 41/18 <b>details</b> [1] 32/6 <b>determine</b> [3] 5/17 13/7 16/8 <b>develop</b> [3] 7/8 7/9 7/9 <b>developed</b> [1] 13/9 <b>did</b> [43] 7/5 10/10 10/14 11/17 12/21 15/4 21/1 21/3 21/4 21/11 23/19 26/21 28/22 28/22 29/22 30/2 31/13 31/14 32/25 33/8 35/24 36/12 36/14 36/16 38/18 39/13 39/16 40/7 40/17 42/14 43/8 43/21 43/22 44/1 44/22 45/9 46/17 46/19 49/7 49/24 51/16 51/22 51/22 <b>didn't</b> [4] 18/9 23/20 31/3 36/11 <b>difference</b> [1] 31/2 <b>different</b> [1] 27/21 <b>direct</b> [1] 8/7 <b>direct --</b> [1] 8/7 <b>directly</b> [1] 17/18 <b>disagree</b> [1] 6/24 <b>disciplines</b> [1] 4/8 <b>disclosed</b> [1] 22/3 <b>disclosure</b> [1] 16/7 <b>discover</b> [1] 15/16 <b>discovery</b> [4] 6/5 6/8 7/12 7/13 <b>discuss</b> [1] 37/1 <b>discussed</b> [7] 17/24 18/4 21/14 25/7 31/23 35/1 39/5 <b>discussing</b> [2] 18/12 40/25 <b>discussion</b> [27] 15/24 16/14 18/6 18/8 19/12 19/23 21/16 21/17 21/19 23/8 23/9 23/11 24/5 25/11 25/13 25/22 27/2 27/5

<p><b>D</b></p> <p><b>discussion...</b> [9] 30/14 30/15 30/19 30/22 36/12 41/9 42/24 43/12 46/4</p> <p><b>discussions</b> [31] 22/22 23/16 24/16 25/15 27/14 27/18 29/25 32/24 33/4 33/7 33/8 33/12 34/6 36/6 36/15 37/4 37/5 37/10 37/22 37/25 38/16 38/18 40/5 40/17 43/9 44/14 44/25 47/13 47/16 48/8 49/7</p> <p><b>Division</b> [3] 14/4 24/6 24/8</p> <p><b>do</b> [39] 4/18 4/20 4/21 4/22 4/22 6/2 6/12 6/15 8/5 9/2 10/15 11/6 11/20 12/12 14/20 14/23 15/10 17/24 19/1 20/17 20/20 21/2 23/3 23/20 25/17 26/14 27/11 29/3 30/11 30/21 35/19 40/13 45/4 46/19 47/12 47/14 48/19 50/17 51/5</p> <p><b>docket</b> [1] 10/5</p> <p><b>document</b> [5] 16/16 16/17 41/11 49/1 50/10</p> <p><b>documents</b> [1] 17/1</p> <p><b>does</b> [3] 5/25 6/20 7/6</p> <p><b>doing</b> [2] 17/19 41/10</p> <p><b>dollar</b> [2] 30/17 31/21</p> <p><b>don't</b> [20] 8/24 11/17 12/10 14/9 15/1 17/17 18/19 20/16 20/16 20/25 25/5 25/6 26/2 27/4 28/16 30/21 35/1 36/13 41/23 45/23</p> <p><b>don't --</b> [2] 20/16 25/5</p> <p><b>done</b> [1] 25/11</p> <p><b>door</b> [2] 7/15 43/2</p> <p><b>down</b> [1] 53/7</p> <p><b>dozen</b> [2] 19/9 31/21</p> <p><b>draft</b> [2] 7/18 41/5</p> <p><b>drafted</b> [3] 13/10 13/11 13/13</p> <p><b>due</b> [3] 11/15 13/15 29/23</p> <p><b>duly</b> [1] 53/6</p> <p><b>during</b> [9] 4/25 9/7 12/17 22/22 27/18 35/11 37/24 41/13 51/15</p> <p><b>duties</b> [1] 4/3</p>	<p>46/19</p> <p><b>enter</b> [1] 43/21</p> <p><b>entities</b> [1] 12/9</p> <p><b>environmental</b> [1] 10/2</p> <p><b>equivalent</b> [1] 6/21</p> <p><b>establish</b> [2] 6/4 9/15</p> <p><b>established</b> [1] 26/3</p> <p><b>et</b> [1] 49/13</p> <p><b>et cetera</b> [1] 49/13</p> <p><b>euphemistically</b> [1] 4/16</p> <p><b>evening</b> [6] 39/8 39/22 41/7 44/2 44/14 46/25</p> <p><b>events</b> [4] 19/5 33/11 36/18 45/14</p> <p><b>ever</b> [2] 41/23 51/16</p> <p><b>Eversol</b> [1] 5/6</p> <p><b>everybody</b> [1] 22/21</p> <p><b>everyone</b> [4] 23/9 32/21 40/3 46/10</p> <p><b>everyone --</b> [1] 23/9</p> <p><b>everything</b> [2] 4/14 47/6</p> <p><b>evidence</b> [5] 36/16 36/23 42/15 46/21 46/24</p> <p><b>ex</b> [10] 14/25 45/21 45/23 46/8 50/14 50/16 51/6 51/12 51/17 51/24</p> <p><b>ex parte</b> [10] 14/25 45/21 45/23 46/8 50/14 50/16 51/6 51/12 51/17 51/24</p> <p><b>exactly</b> [1] 41/25</p> <p><b>EXAMINATION</b> [1] 3/7</p> <p><b>example</b> [1] 15/3</p> <p><b>except</b> [2] 6/19 24/6</p> <p><b>exception</b> [1] 24/3</p> <p><b>exceptions</b> [1] 6/14</p> <p><b>Exhibit</b> [2] 2/2 50/9</p> <p><b>expected</b> [1] 27/19</p> <p><b>expires</b> [1] 53/12</p> <p><b>explanation</b> [4] 15/25 17/21 18/1 41/24</p> <p><b>explanations</b> [1] 32/5</p> <p><b>explanations --</b> [1] 32/5</p> <p><b>explicitly</b> [1] 8/21</p> <p><b>extended</b> [4] 21/19 23/8 23/9 37/10</p> <p><b>extensive</b> [1] 33/4</p> <p><b>extent</b> [3] 19/25 23/16 32/5</p>	<p><b>financing</b> [2] 4/6 4/6</p> <p><b>first</b> [10] 7/23 7/25 13/3 25/17 28/19 36/2 36/5 38/6 50/25 53/6</p> <p><b>five</b> [1] 15/6</p> <p><b>focal</b> [1] 9/7</p> <p><b>focus</b> [1] 11/1</p> <p><b>folks</b> [2] 25/8 31/9</p> <p><b>following</b> [4] 18/22 20/3 37/17 48/16</p> <p><b>foregoing</b> [2] 53/5 53/8</p> <p><b>form</b> [1] 11/11</p> <p><b>formal</b> [1] 48/22</p> <p><b>forth</b> [1] 53/6</p> <p><b>four</b> [2] 5/23 20/7</p> <p><b>Frankfort</b> [1] 3/3</p> <p><b>Friday</b> [3] 3/4 20/4 34/23</p> <p><b>front</b> [3] 36/17 41/18 43/2</p> <p><b>full</b> [2] 3/10 20/7</p> <p><b>function</b> [1] 51/7</p> <p><b>fund</b> [1] 43/13</p> <p><b>further</b> [14] 24/16 26/19 32/23 34/6 34/9 36/6 37/1 37/4 37/22 39/23 46/16 47/15 48/8 53/10</p>
<p><b>E</b></p> <p><b>E --</b> [1] 9/11</p> <p><b>e-mail</b> [9] 1/24 15/23 17/23 18/1 18/9 26/2 26/4 30/4 30/5</p> <p><b>e-mail --</b> [2] 26/2 30/4</p> <p><b>e-mailed</b> [1] 15/7</p> <p><b>e-mails</b> [2] 18/9 26/18</p> <p><b>earlier</b> [1] 50/16</p> <p><b>early</b> [2] 5/10 10/3</p> <p><b>earnings</b> [6] 9/12 21/18 21/23 23/7 24/4 24/20</p> <p><b>East</b> [1] 1/22</p> <p><b>effect</b> [2] 17/4 46/1</p> <p><b>effort</b> [3] 23/15 24/10 24/12</p> <p><b>either</b> [15] 6/22 8/6 8/21 9/20 10/11 15/23 17/25 33/20 34/12 39/17 41/17 42/4 44/23 48/2 49/25</p> <p><b>electric</b> [13] 1/5 1/6 1/10 22/18 22/19 32/8 32/8 32/14 38/8 47/2 47/2 47/8 47/9</p> <p><b>electricity</b> [1] 22/13</p> <p><b>element</b> [1] 29/24</p> <p><b>ELLEN</b> [3] 1/21 53/4 53/18</p> <p><b>else</b> [4] 20/19 27/25 28/17 47/6</p> <p><b>employed</b> [1] 3/20</p> <p><b>Employee</b> [2] 2/3 50/12</p> <p><b>employees</b> [2] 8/7 51/12</p> <p><b>end</b> [8] 5/7 11/3 11/6 25/21 26/14 34/22 36/8 48/7</p> <p><b>Energy</b> [4] 14/5 16/11 24/6 24/8</p> <p><b>engage</b> [1] 6/8</p> <p><b>engaged</b> [3] 8/12 13/1 43/9</p> <p><b>enough</b> [6] 28/3 28/8 35/23 42/13 46/15</p>	<p><b>F</b></p> <p><b>face-to-face</b> [2] 26/19 33/20</p> <p><b>facilitate</b> [1] 23/15</p> <p><b>facilitator</b> [1] 23/23</p> <p><b>facilities</b> [1] 4/7</p> <p><b>fact</b> [1] 41/6</p> <p><b>fair</b> [8] 23/24 28/3 28/8 35/19 35/23 42/13 46/15 46/19</p> <p><b>fairly</b> [4] 10/3 20/4 30/7 30/24</p> <p><b>faith</b> [1] 29/19</p> <p><b>far</b> [3] 30/24 32/13 34/25</p> <p><b>FAX</b> [1] 1/24</p> <p><b>federal</b> [2] 14/5 20/18</p> <p><b>fellow</b> [1] 29/20</p> <p><b>felt</b> [1] 16/6</p> <p><b>few</b> [1] 17/7</p> <p><b>Fifth</b> [1] 2/12</p> <p><b>file</b> [15] 6/6 6/12 7/24 9/7 10/19 11/5 11/5 11/12 12/15 15/9 17/2 17/7 17/8 21/2 21/2</p> <p><b>file --</b> [2] 17/7 21/2</p> <p><b>filed</b> [19] 5/16 5/20 7/11 8/1 8/2 8/4 10/8 11/14 11/20 12/2 12/6 12/11 15/4 15/16 16/22 19/8 19/10 19/14 22/17</p> <p><b>filing</b> [9] 8/3 8/16 11/2 11/16 12/15 13/2 13/8 14/19 18/5</p> <p><b>final</b> [1] 39/19</p> <p><b>finally</b> [1] 42/25</p> <p><b>financial</b> [2] 8/19 8/22</p>	<p><b>G</b></p> <p><b>gas</b> [9] 1/5 1/6 22/13 22/19 28/22 32/9 32/13 38/9 47/3</p> <p><b>gave</b> [3] 41/7 41/19 45/18</p> <p><b>general</b> [18] 2/9 4/19 4/23 5/2 5/3 5/5 5/7 5/9 5/14 12/4 12/14 14/22 39/12 39/15 42/6 42/7 42/22 45/18</p> <p><b>general's</b> [14] 12/3 12/18 14/1 17/17 26/10 26/24 34/11 34/20 35/14 38/1 40/8 41/12 44/5 46/12</p> <p><b>generally</b> [4] 4/1 19/3 19/24 23/10</p> <p><b>generally staff</b> [1] 23/10</p> <p><b>gentlemen's</b> [1] 32/20</p> <p><b>get</b> [7] 19/20 24/13 27/10 34/13 36/9 39/19 39/22</p> <p><b>gets</b> [2] 5/16 6/17</p> <p><b>getting</b> [4] 25/12 25/22 26/1 26/3</p> <p><b>give</b> [4] 15/19 18/1 27/24 35/3</p> <p><b>given</b> [9] 27/22 27/25 28/1 29/11 29/17 42/3 42/8 42/10 53/13</p> <p><b>giving</b> [2] 43/5 53/6</p> <p><b>go</b> [6] 18/25 30/3 33/11 36/16 42/14 49/2</p> <p><b>going</b> [21] 7/24 9/8 10/6 12/21 15/20 25/4 26/10 26/16 26/16 27/11 32/25 34/9 34/10 34/22 35/9 36/19 38/23 41/10 41/16 42/22 47/1</p> <p><b>GOLDBERG</b> [3] 2/11 2/11 3/9</p> <p><b>good</b> [1] 18/17</p> <p><b>got</b> [10] 9/21 15/23 17/18 17/22 33/14 36/1 41/23 41/24 42/25 43/2</p> <p><b>gotten</b> [2] 16/3 39/21</p> <p><b>Government</b> [1] 14/2</p> <p><b>group</b> [4] 24/22 25/5 32/3 37/18</p> <p><b>guess</b> [2] 6/13 49/1</p> <p><b>H</b></p> <p><b>had</b> [71]</p> <p><b>half</b> [3] 19/9 31/20 35/10</p> <p><b>hall</b> [2] 38/22 42/2</p> <p><b>hallway</b> [1] 15/17</p> <p><b>hand</b> [1] 53/13</p> <p><b>Handbook</b> [2] 2/3 50/13</p> <p><b>happened</b> [1] 42/1</p> <p><b>happens</b> [1] 20/5</p> <p><b>has</b> [5] 5/17 8/2 12/2 15/16 27/25</p> <p><b>have</b> [100]</p> <p><b>have --</b> [1] 36/7</p> <p><b>having</b> [7] 10/15 10/20 12/12 16/13 24/7 25/4 45/5</p>

<b>H</b> <b>he</b> [25] 5/9 17/20 17/22 17/24 18/10 18/11 26/9 26/16 42/25 42/25 43/2 43/3 43/5 43/7 43/8 43/10 43/16 43/20 43/22 45/18 45/22 45/22 46/16 46/16 46/17 <b>he --</b> [1] 42/25 <b>head</b> [1] 20/25 <b>heard</b> [5] 38/3 45/11 46/1 46/3 46/5 <b>hearing</b> [49] 6/6 6/11 7/9 7/10 18/13 19/17 20/2 20/2 22/25 25/5 25/17 25/24 29/9 30/2 31/12 33/8 36/3 36/5 36/15 36/20 36/21 36/25 37/3 37/3 37/12 37/14 37/16 37/17 37/19 38/12 38/17 38/18 40/2 40/22 41/1 41/3 42/23 43/4 43/8 43/17 43/20 43/21 44/25 45/25 46/20 48/14 49/1 49/6 49/6 <b>hearing --</b> [1] 7/9 <b>hearings</b> [3] 4/11 45/6 51/16 <b>heating</b> [1] 43/13 <b>held</b> [4] 29/25 34/10 37/4 37/5 <b>helpful</b> [1] 31/5 <b>her</b> [7] 17/25 17/25 18/1 34/12 34/24 41/24 41/25 <b>here</b> [7] 4/11 12/19 15/18 20/1 20/6 51/4 51/7 <b>here's</b> [1] 17/6 <b>hereby</b> [1] 53/4 <b>hereto</b> [1] 53/11 <b>hesitant</b> [1] 27/14 <b>Hey</b> [1] 12/20 <b>Hi</b> [1] 38/23 <b>high</b> [1] 32/16 <b>higher</b> [6] 24/17 28/7 28/15 28/18 29/1 39/20 <b>him</b> [3] 17/25 18/16 42/24 <b>himself</b> [2] 42/6 42/22 <b>hired</b> [1] 5/8 <b>his</b> [3] 39/13 40/4 43/3 <b>home</b> [2] 3/17 43/13 <b>hookup</b> [1] 20/17 <b>hour</b> [3] 35/10 35/10 43/18 <b>hours</b> [1] 33/5 <b>how</b> [9] 3/22 17/15 21/11 27/12 30/2 30/8 32/6 38/23 43/16 <b>Howard</b> [4] 34/19 39/14 41/15 41/24	<b>included</b> [1] 22/18 <b>includes</b> [3] 6/5 14/22 38/8 <b>including</b> [4] 37/2 38/1 44/20 46/12 <b>income</b> [2] 43/14 43/15 <b>incorporated</b> [1] 9/14 <b>incorporation</b> [1] 5/21 <b>incorporation</b> [1] 5/21 <b>increase</b> [2] 22/18 27/8 <b>indicated</b> [3] 18/10 28/14 31/9 <b>individual</b> [2] 14/9 42/8 <b>individuals</b> [2] 24/17 39/19 <b>industrial</b> [10] 12/6 12/19 13/23 13/25 26/5 26/23 33/21 34/1 34/17 35/14 <b>informal</b> [5] 13/3 18/12 18/25 20/8 21/11 <b>information</b> [6] 6/9 6/17 16/11 17/6 46/8 50/12 <b>informed</b> [1] 41/20 <b>initial</b> [3] 42/5 42/8 42/10 <b>initially</b> [1] 42/3 <b>innocuous</b> [1] 18/3 <b>intended</b> [2] 15/9 17/2 <b>intending</b> [1] 8/16 <b>intending --</b> [1] 8/16 <b>intent</b> [8] 8/2 8/4 9/7 10/19 11/4 11/5 12/2 12/15 <b>interest</b> [2] 29/23 53/11 <b>intervene</b> [2] 7/14 12/5 <b>intervened</b> [3] 12/9 12/10 14/8 <b>intervener</b> [4] 13/17 14/17 22/3 35/25 <b>interveners</b> [23] 6/5 6/10 11/24 12/14 13/18 14/22 17/15 24/2 25/10 25/13 25/14 25/19 29/4 30/10 30/23 32/16 33/9 38/20 44/6 44/24 49/8 49/20 50/1 <b>intervening</b> [1] 29/20 <b>interview</b> [2] 45/11 45/17 <b>interviews</b> [1] 43/5 <b>into</b> [12] 9/14 9/23 9/24 31/11 32/6 36/23 37/3 37/11 41/3 43/7 46/21 48/23 <b>introduction</b> [1] 48/22 <b>INVESTIGATION</b> [1] 1/4 <b>involved</b> [1] 17/18 <b>involving</b> [1] 9/12 <b>is</b> [39] 3/15 4/15 5/12 6/8 6/17 6/21 7/7 9/9 9/25 10/14 12/2 18/20 18/21 20/8 22/25 26/21 27/6 27/16 27/17 27/18 28/3 32/15 32/18 33/3 33/24 35/19 40/12 41/4 46/2 48/1 48/6 49/24 50/11 50/19 51/1 51/6 51/11 51/13 53/8 <b>Isaac</b> [2] 20/23 31/11 <b>isn't</b> [1] 28/15 <b>issue</b> [6] 6/9 11/13 15/3 15/15 16/13 24/5 <b>issued</b> [6] 13/15 15/5 16/20 22/5 22/5 22/5 <b>issued --</b> [2] 22/5 22/5 <b>issues</b> [33] 4/8 4/10 7/7 8/19 15/22 18/13 21/16 21/22 22/1 22/4 23/17 23/19 24/13 24/20 25/7 27/5 30/16 30/17 31/16 31/21 31/23 32/2 32/3 37/1 37/8 39/2 39/4 43/12 44/16 44/21 47/6 47/11 47/16 <b>issuing</b> [2] 4/6 15/13 <b>it</b> [86] <b>it --</b> [2] 37/6 47/20 <b>it's</b> [12] 3/14 3/17 8/14 12/7 12/21 24/15 25/6 27/18 28/13 28/18 37/23 46/6 <b>its</b> [2] 6/7 6/25 <b>itself</b> [1] 11/2	<b>Jason</b> [1] 5/8 <b>Jeff</b> [2] 20/23 31/10 <b>JEFFERSON</b> [1] 53/2 <b>join</b> [3] 24/11 24/14 24/19 <b>JONATHAN</b> [1] 2/11 <b>July</b> [1] 5/10 <b>June</b> [4] 5/1 5/7 5/10 49/24 <b>just</b> [17] 3/25 5/11 8/18 9/5 11/17 12/7 14/6 18/6 19/22 22/19 23/22 35/18 37/9 41/22 45/21 47/9 51/5 <b>just --</b> [1] 45/21
<b>I</b> <b>I --</b> [19] 8/14 9/23 16/14 17/17 18/7 18/19 20/20 25/2 28/11 30/4 30/21 34/14 35/1 36/11 36/19 47/14 47/19 47/19 50/24 <b>I'll</b> [1] 10/7 <b>I'm</b> [18] 3/20 5/4 5/11 10/3 17/22 19/18 20/4 22/25 27/14 28/3 30/4 31/13 33/15 35/2 38/14 44/8 50/11 50/24 <b>I've</b> [5] 13/6 18/9 38/3 40/24 41/20 <b>idea</b> [1] 18/17 <b>identified</b> [1] 11/25 <b>identify</b> [1] 13/19 <b>if</b> [23] 5/5 6/10 12/17 15/10 17/22 18/8 19/15 19/18 20/16 21/4 27/2 27/22 27/24 28/9 29/18 30/12 32/11 32/21 35/3 35/3 35/5 35/6 46/7 <b>if --</b> [2] 35/3 35/5 <b>imagine</b> [1] 35/5 <b>immediately</b> [1] 36/16 <b>imparted</b> [1] 51/12 <b>implicitly</b> [1] 8/22 <b>important</b> [1] 29/2 <b>in</b> [130] <b>inappropriate</b> [3] 46/9 51/19 51/24 <b>include</b> [4] 4/5 21/5 28/22 36/13	<b>J</b> <b>January</b> [3] 5/1 5/4 9/8 <b>January the</b> [1] 9/8	<b>K</b> <b>Kendrick</b> [2] 16/14 18/7 <b>KENTUCKY</b> [12] 1/1 1/11 1/22 1/23 2/13 3/3 13/25 14/11 14/11 53/1 53/4 53/15 <b>kind</b> [8] 21/21 24/12 31/6 31/23 32/2 41/23 43/10 46/16 <b>KIUC</b> [6] 13/24 13/25 14/17 30/15 31/15 35/5 <b>knew</b> [1] 8/15 <b>know</b> [36] 8/18 8/19 8/20 8/20 8/22 11/15 15/5 15/8 15/13 15/14 15/19 16/10 17/6 18/1 18/21 22/17 23/16 27/7 28/13 30/7 32/23 34/20 35/3 35/6 36/9 36/13 39/25 40/1 40/4 40/11 40/12 41/19 41/25 45/22 46/18 47/19 <b>know --</b> [1] 40/4 <b>knowing</b> [1] 27/25 <b>knowledge</b> [7] 7/24 8/1 8/9 8/17 8/24 12/7 20/15 <b>knowledge --</b> [1] 8/24 <b>known</b> [2] 4/16 40/15 <b>Kroger</b> [2] 14/14 14/15 <b>KU</b> [52] 7/2 7/24 8/6 8/13 9/10 9/12 9/15 10/8 10/9 11/7 11/21 14/3 14/4 14/11 15/22 15/24 16/2 16/20 17/14 19/6 19/9 19/13 19/21 21/24 22/19 24/9 25/8 25/12 25/19 26/11 27/12 28/20 30/12 31/14 31/18 32/8 33/9 33/21 33/25 34/16 35/2 35/12 35/25 38/20 41/4 44/24 45/20 47/2 47/8 49/8 49/17 49/25 <b>KU --</b> [3] 7/2 8/6 8/13 <b>Kurtsinger</b> [1] 26/6 <b>Kurtz</b> [5] 26/7 26/8 26/15 33/21 34/17
		<b>L</b> <b>large</b> [4] 7/6 9/16 31/12 53/4 <b>last</b> [1] 21/12 <b>late</b> [9] 5/9 11/24 13/2 14/19 21/19 30/7 39/8 39/11 44/3 <b>later</b> [2] 24/23 33/6 <b>lawyers</b> [1] 41/2 <b>leads</b> [1] 48/6 <b>leaning</b> [1] 8/16 <b>least</b> [5] 8/3 19/7 36/10 40/1 47/24 <b>leave</b> [2] 28/8 40/19 <b>leaving</b> [1] 31/10 <b>left</b> [11] 23/21 25/9 31/19 34/4 34/8 35/12 36/7 37/12 41/23 42/14 47/7 <b>legal</b> [5] 4/7 4/10 4/13 5/25 14/7 <b>lengthy</b> [1] 37/6 <b>less</b> [1] 43/18 <b>let</b> [8] 5/22 8/11 23/10 28/11 28/21 31/12 49/16 50/10 <b>let's</b> [5] 9/6 11/1 18/25 27/20 33/11 <b>letter</b> [1] 11/11 <b>level</b> [2] 6/23 24/17 <b>Lexington-Fayette</b> [1] 14/2 <b>LG</b> [54] <b>like</b> [5] 3/17 11/17 18/22 28/2 28/16 <b>likely</b> [1] 31/25

<b>L</b> <b>limited</b> [1] 6/8 <b>line</b> [2] 41/10 41/11 <b>list</b> [3] 19/6 21/25 22/2 <b>little</b> [3] 31/13 35/4 35/6 <b>LLC</b> [1] 1/21 <b>long</b> [7] 3/22 17/9 21/11 28/13 30/2 30/8 43/16 <b>longer</b> [1] 41/21 <b>look</b> [2] 28/2 50/13 <b>looked</b> [2] 30/5 40/24 <b>looking</b> [3] 8/23 10/4 18/20 <b>lot</b> [1] 43/1 <b>LOUISVILLE</b> [5] 1/6 1/23 2/13 14/7 53/14 <b>low</b> [3] 32/15 43/14 43/15 <b>lower</b> [1] 35/6 <b>lunch</b> [3] 21/20 37/4 37/6	13/11 15/11 <b>MR</b> [1] 3/9 <b>Mr.</b> [3] 26/6 26/7 39/14 <b>Mr. Howard</b> [1] 39/14 <b>Mr. Kurtzinger</b> [1] 26/6 <b>Mr. Kurtz</b> [1] 26/7 <b>Ms.</b> [2] 39/14 42/14 <b>Ms. Blackford</b> [2] 39/14 42/14 <b>much</b> [4] 27/12 28/7 30/22 35/1 <b>my</b> [43] 3/17 5/7 7/7 9/5 9/25 10/14 16/23 18/9 20/2 20/25 21/13 22/23 24/15 25/20 26/21 28/19 30/13 32/14 32/18 33/10 33/23 34/3 34/7 35/22 37/2 37/23 39/10 39/18 39/21 40/13 40/14 40/21 41/4 41/14 42/12 43/7 43/25 45/3 46/6 53/7 53/9 53/12 53/13 <b>myself</b> [4] 11/9 33/23 34/1 36/13	<b>occupation</b> [1] 3/16 <b>occupation --</b> [1] 3/16 <b>occur</b> [1] 15/13 <b>occurred</b> [4] 10/12 11/2 16/23 23/25 <b>occurring</b> [1] 24/1 <b>Odgen</b> [1] 16/1 <b>off</b> [6] 20/10 20/11 20/24 39/15 40/24 48/9 <b>off --</b> [1] 48/9 <b>off-the-record</b> [1] 37/9 <b>offer</b> [4] 23/21 26/12 26/22 28/19 <b>offer --</b> [1] 26/22 <b>offers</b> [1] 31/2 <b>office</b> [16] 12/4 12/18 14/1 17/17 26/10 26/24 34/3 34/4 34/7 34/11 34/15 34/16 34/20 35/14 38/1 39/20 <b>office --</b> [2] 17/17 34/4 <b>offices</b> [2] 3/2 26/21 <b>often</b> [2] 11/13 15/18 <b>oftentimes</b> [2] 11/12 12/6 <b>okay</b> [53] 4/18 4/25 5/12 7/23 8/10 8/25 9/5 10/23 11/23 12/25 16/18 17/4 17/11 18/4 18/25 20/21 21/6 21/10 22/15 22/24 23/2 24/24 25/16 29/6 29/14 30/9 33/7 33/11 35/19 36/14 38/6 39/6 40/19 42/13 42/18 43/14 43/16 43/23 44/18 45/4 45/9 45/13 46/15 47/12 49/11 49/15 50/4 50/10 50/23 51/5 51/15 51/22 52/2 <b>on</b> [107] <b>on --</b> [1] 41/7 <b>on-the-record</b> [3] 20/9 46/21 46/23 <b>one</b> [17] 4/22 9/12 9/12 14/18 15/25 16/19 17/16 21/3 21/4 30/12 30/23 36/10 36/10 41/16 42/20 43/11 47/20 <b>one --</b> [1] 36/10 <b>ongoing</b> [1] 10/2 <b>only</b> [9] 9/24 17/13 17/16 23/15 25/11 30/18 31/20 35/13 47/6 <b>operate</b> [1] 22/20 <b>operating</b> [1] 39/16 <b>opinions</b> [1] 4/13 <b>opportunity</b> [3] 6/5 29/11 29/17 <b>opposed</b> [1] 16/9 <b>or</b> [88] <b>order</b> [10] 5/19 7/18 7/19 11/12 15/5 15/14 15/15 18/3 19/24 36/25 <b>orders</b> [2] 4/13 13/10 <b>originally</b> [1] 49/2 <b>other</b> [41] 4/8 8/12 8/18 10/1 10/4 11/19 12/8 12/14 13/12 15/8 16/19 17/11 18/23 22/24 23/2 23/4 23/18 24/1 24/14 24/19 24/24 30/24 31/19 33/7 33/22 35/3 35/14 35/17 35/24 36/13 36/24 38/10 38/16 38/24 42/5 44/16 44/24 47/16 49/5 49/17 50/5 <b>other --</b> [2] 30/24 50/5 <b>others</b> [1] 27/10 <b>otherwise</b> [1] 37/12 <b>our</b> [6] 8/2 12/8 32/4 32/6 32/12 32/13 <b>out</b> [12] 4/13 18/3 18/16 21/24 22/5 23/20 25/7 32/14 34/2 34/14 34/23 35/7 <b>out-of-town</b> [1] 19/25 <b>outcome</b> [1] 53/11 <b>outside</b> [2] 10/21 25/4 <b>outstanding</b> [1] 21/22 <b>over</b> [3] 3/25 35/10 36/6 <b>own</b> [4] 6/25 14/8 39/16 40/4
<b>M</b> <b>made</b> [9] 19/19 24/18 26/13 28/17 34/5 40/21 42/22 45/1 50/15 <b>main</b> [1] 24/22 <b>major</b> [1] 12/4 <b>make</b> [6] 6/16 13/14 17/3 25/14 36/22 45/9 <b>making</b> [1] 45/25 <b>many</b> [1] 18/15 <b>MARKED</b> [1] 50/9 <b>marriage</b> [1] 53/10 <b>matters</b> [2] 21/15 36/24 <b>may</b> [57] <b>maybe</b> [11] 18/15 19/9 30/16 30/18 32/11 34/7 34/21 36/9 41/15 44/4 45/21 <b>me</b> [28] 3/17 4/1 5/12 5/22 7/23 8/11 12/25 15/4 15/7 17/23 17/24 19/4 23/10 27/22 27/24 28/11 28/21 31/12 34/8 34/12 36/11 36/17 45/13 48/6 49/16 50/10 53/7 53/7 <b>mean</b> [3] 8/24 30/22 50/24 <b>meaning</b> [1] 8/14 <b>meant</b> [1] 38/14 <b>mechanism</b> [6] 9/13 21/18 21/23 23/8 24/4 24/20 <b>meet</b> [2] 32/19 32/22 <b>meeting</b> [6] 26/19 26/22 29/9 33/20 34/10 34/16 <b>member</b> [2] 10/11 17/19 <b>members</b> [7] 7/21 13/12 20/22 31/19 36/21 49/17 51/25 <b>memo</b> [3] 21/1 21/2 30/4 <b>mentioned</b> [2] 16/18 48/10 <b>mergers</b> [1] 4/7 <b>merits</b> [3] 6/16 23/4 23/6 <b>message</b> [2] 34/9 41/19 <b>message --</b> [1] 41/19 <b>met</b> [2] 13/8 48/12 <b>might</b> [3] 8/20 29/25 48/15 <b>Mike</b> [2] 33/21 34/17 <b>million</b> [1] 28/3 <b>minimum</b> [1] 13/8 <b>minutes</b> [3] 41/15 43/5 43/19 <b>mistaken</b> [2] 47/15 48/15 <b>money</b> [1] 35/4 <b>more</b> [4] 5/22 23/22 24/12 35/4 <b>morning</b> [10] 26/4 26/15 33/14 33/19 37/17 41/9 47/9 47/21 48/2 48/6 <b>most</b> [4] 12/8 21/13 27/6 40/1 <b>motion</b> [3] 15/4 15/9 15/14 <b>motion --</b> [1] 15/9 <b>motions</b> [7] 7/10 7/12 7/13 7/13 7/14	<b>N</b> <b>name</b> [3] 3/10 14/8 14/9 <b>National</b> [2] 2/12 45/16 <b>nature</b> [1] 12/22 <b>need</b> [1] 5/18 <b>negotiate</b> [1] 44/1 <b>negotiated</b> [1] 45/20 <b>negotiating</b> [1] 23/20 <b>negotiation</b> [3] 37/21 44/7 46/20 <b>negotiations</b> [1] 44/9 <b>never</b> [2] 3/18 40/24 <b>Newell</b> [1] 16/2 <b>news</b> [1] 45/17 <b>next</b> [2] 32/11 45/4 <b>night</b> [2] 37/24 42/10 <b>no</b> [39] 1/5 1/10 2/2 8/9 9/4 9/4 10/14 10/20 11/8 11/22 12/1 12/16 12/23 12/24 23/24 28/11 28/14 29/1 29/7 31/9 32/19 32/19 36/6 36/6 36/10 36/10 41/21 45/3 46/10 48/8 49/10 49/19 49/21 49/21 50/3 50/9 51/21 52/1 53/11 <b>no --</b> [2] 28/11 32/19 <b>No.</b> [3] 25/5 31/12 43/4 <b>none</b> [1] 17/12 <b>North</b> [7] 9/17 9/19 10/6 10/10 10/16 10/23 14/3 <b>not</b> [68] <b>Notary</b> [3] 53/4 53/12 53/18 <b>note</b> [1] 41/19 <b>notes</b> [6] 28/12 28/13 28/14 28/19 53/7 53/9 <b>notes --</b> [1] 28/13 <b>Nothing</b> [1] 39/1 <b>notice</b> [11] 8/1 8/4 8/15 9/7 10/18 11/4 11/5 11/19 12/1 12/14 12/21 <b>November</b> [5] 8/5 9/6 10/17 10/18 53/12 <b>now</b> [11] 8/11 8/13 24/24 28/15 29/16 35/23 38/6 39/3 42/13 47/14 51/15 <b>NPR</b> [1] 45/16 <b>number</b> [40] 3/18 10/1 16/4 17/1 22/6 22/7 22/11 25/8 27/6 27/9 28/5 28/7 28/15 28/18 29/1 29/17 29/21 31/6 31/7 31/15 32/4 32/6 32/8 32/12 32/13 33/5 34/12 34/13 35/7 35/16 37/8 38/2 38/3 40/9 40/13 40/15 40/18 42/4 44/15 47/1 <b>numbers</b> [10] 7/2 27/15 27/21 27/22 27/24 28/2 29/2 30/25 32/2 35/15 <b>numbers --</b> [1] 35/15 <b>numerous</b> [1] 8/12	<b>P</b> <b>P.M</b> [1] 52/5 <b>page</b> [5] 2/3 41/10 41/10 50/13 50/20

<p><b>P</b></p> <p>pages [1] 53/8</p> <p>part [11] 10/3 16/3 17/2 27/13 35/11 38/17 40/5 44/6 44/8 45/17 51/19</p> <p>parte [10] 14/25 45/21 45/23 46/8 50/14 50/16 51/6 51/12 51/17 51/24</p> <p>partial [2] 47/22 48/23</p> <p>partially [1] 17/4</p> <p>participants [1] 41/8</p> <p>participate [4] 6/11 10/11 29/24 41/21</p> <p>participated [8] 20/19 23/10 24/25 33/16 33/17 34/15 34/20 34/21</p> <p>participated -- [1] 34/20</p> <p>participating [2] 4/10 23/3</p> <p>particular [5] 6/1 8/24 18/14 50/19 51/1</p> <p>parties [44] 20/5 20/9 20/12 20/14 20/17 21/21 23/5 23/22 24/2 24/5 24/15 24/19 25/18 27/19 27/22 29/8 29/11 29/18 29/20 30/22 30/22 31/3 31/22 33/1 33/13 34/5 35/3 35/20 36/12 36/14 36/25 37/2 37/18 38/1 40/19 40/25 42/14 44/1 44/20 46/5 46/19 48/12 48/25 53/10</p> <p>parties -- [4] 20/17 29/18 30/22 37/2</p> <p>party [1] 19/12</p> <p>passed [3] 15/17 21/24 38/22</p> <p>passing [1] 51/5</p> <p>pending [2] 9/10 36/22</p> <p>people [4] 19/16 19/22 25/3 43/1</p> <p>performed [2] 16/8 16/9</p> <p>period [8] 4/25 5/2 9/8 12/17 37/11 41/1 43/21 44/7</p> <p>person [2] 17/23 20/24</p> <p>personnel [6] 11/21 19/9 19/13 33/9 35/25 39/15</p> <p>phone [5] 3/17 20/20 31/9 34/12 34/13</p> <p>phone -- [1] 31/9</p> <p>place [3] 24/25 46/9 53/5</p> <p>plans [1] 34/2</p> <p>playing [2] 7/4 23/22</p> <p>pleading [1] 11/20</p> <p>please [1] 3/11</p> <p>point [16] 9/7 11/23 17/9 25/23 27/3 27/5 31/20 31/25 32/10 34/5 37/7 37/24 41/22 42/20 44/13 46/3</p> <p>point -- [2] 32/10 44/13</p> <p>policy [7] 50/15 50/19 50/20 50/25 51/3 51/18 51/24</p> <p>policy -- [1] 51/3</p> <p>position [4] 6/1 6/2 6/15 7/7</p> <p>possible [3] 8/14 25/6 28/18</p> <p>possibly [1] 25/22</p> <p>power [1] 9/16</p> <p>prefer [1] 20/6</p> <p>preliminaries [1] 36/20</p> <p>preliminary [1] 36/24</p> <p>prepare [2] 6/20 7/6</p> <p>present [4] 6/25 20/14 20/21 29/12</p> <p>presentation [1] 48/24</p> <p>presented [3] 6/17 26/23 47/23</p> <p>Presently [2] 4/20 4/21</p> <p>press [2] 43/1 43/6</p> <p>pretty [2] 31/13 31/22</p> <p>previously [1] 16/21</p> <p>prior [10] 8/3 8/11 10/12 10/17 11/14 12/5 18/13 25/23 28/12 53/6</p> <p>privilege [1] 16/6</p> <p>probably [8] 10/1 12/21 20/24 25/9 25/9 32/16 43/4 51/3</p> <p>problem [1] 28/1</p> <p>procedural [5] 6/4 13/10 15/3 18/13</p>	<p>21/14</p> <p>proceeded [2] 40/6 47/10</p> <p>proceeding [2] 9/22 12/19</p> <p>proceedings [1] 10/2</p> <p>process [4] 41/13 41/16 41/21 42/18</p> <p>process -- [1] 42/18</p> <p>produced [1] 42/15</p> <p>proposal [3] 22/10 22/13 27/12</p> <p>proposed [2] 6/23 9/20</p> <p>protest [1] 15/17</p> <p>provided [1] 17/7</p> <p>PSC [1] 15/22</p> <p>public [22] 1/1 2/3 2/9 3/2 3/21 3/23 4/2 6/2 6/6 7/6 7/7 7/10 20/21 36/21 45/5 45/16 50/12 50/15 51/7 53/4 53/12 53/18</p> <p>purpose [1] 18/12</p> <p>purposes [3] 16/13 16/16 31/16</p> <p>put [4] 32/2 36/16 41/5 41/6</p> <p><b>Q</b></p> <p>question [3] 19/13 49/16 49/20</p> <p>questions [5] 7/9 13/11 13/12 13/14 23/19</p> <p>quick [1] 33/15</p> <p>quite [3] 39/10 42/24 44/3</p> <p><b>R</b></p> <p>R-A-F-F [1] 3/12</p> <p>radio [4] 45/10 45/15 45/16 46/1</p> <p>RAFF [3] 1/17 3/2 3/12</p> <p>rate [32] 4/15 4/16 5/13 6/1 6/12 6/23 7/1 7/24 8/8 8/17 8/23 9/14 9/16 9/20 9/21 9/23 9/25 11/2 13/1 22/2 22/6 22/17 23/6 27/3 27/3 32/13 33/13 36/23 44/16 44/21 45/20 47/5</p> <p>rate-making [1] 16/12</p> <p>rates [4] 1/5 1/10 4/5 6/25</p> <p>RE [1] 1/4</p> <p>reached [5] 21/21 39/7 39/9 44/19 47/25</p> <p>read [1] 41/20</p> <p>realizing [1] 15/18</p> <p>really [7] 5/24 28/13 30/18 30/21 31/20 32/17 35/1</p> <p>really -- [1] 5/24</p> <p>reasonable [1] 40/12</p> <p>reasons [1] 31/6</p> <p>rebuttal [2] 17/3 17/8</p> <p>recall [42] 11/17 13/21 14/10 14/18 17/14 17/16 18/6 18/23 18/24 19/1 19/4 20/16 20/17 20/20 20/25 24/7 24/8 25/6 25/17 26/1 26/2 26/3 27/12 28/7 29/3 30/19 30/21 30/21 30/25 31/10 31/15 32/5 35/20 36/17 36/19 44/20 45/13 45/15 45/23 47/12 47/14 50/17</p> <p>recall -- [1] 25/6</p> <p>received [1] 17/20</p> <p>recognition [1] 39/13</p> <p>recollection [51] 5/8 8/5 9/1 9/3 9/9 9/25 10/14 10/15 10/20 11/6 11/8 11/20 12/12 12/16 12/23 14/21 15/21 16/23 18/19 20/2 21/13 22/12 22/23 23/3 24/15 25/20 26/21 28/14 30/10 30/13 32/15 32/18 33/2 33/10 33/23 34/3 35/2 35/12 35/22 37/2 37/23 39/10 40/21 41/4 41/14 42/12 43/7 43/25 45/3 45/5 48/19</p> <p>recommend [1] 40/14</p> <p>recommended [1] 6/25</p> <p>recommending [1] 32/1</p> <p>reconvene [1] 40/23</p> <p>record [18] 11/19 20/10 20/11 31/25 36/19 36/24 38/11 38/17 38/17 40/24 42/15 43/22 45/1 45/10 46/22 48/23 49/18</p>	<p>53/9</p> <p>records [1] 16/1</p> <p>records -- [1] 16/1</p> <p>redacted [1] 16/5</p> <p>reduced [1] 53/7</p> <p>reference [2] 9/5 50/15</p> <p>reference -- [1] 9/5</p> <p>referenced [1] 11/4</p> <p>referred [1] 51/18</p> <p>referring [2] 50/4 50/20</p> <p>reflect [1] 16/22</p> <p>reflects [1] 46/2</p> <p>regard [8] 7/1 10/9 29/14 39/3 39/6 39/12 44/22 49/15</p> <p>regarding [8] 9/20 14/24 15/22 18/18 21/22 36/22 39/1 46/5</p> <p>regards [2] 10/22 23/7</p> <p>regulations [1] 8/2</p> <p>related [3] 16/17 24/3 53/10</p> <p>relationship [1] 10/10</p> <p>relatively [3] 18/2 35/15 35/18</p> <p>remain [1] 25/15</p> <p>remained [1] 25/9</p> <p>remember [21] 5/6 9/23 16/13 17/12 18/8 26/13 26/15 28/16 29/18 30/11 32/10 32/17 33/3 33/19 33/22 35/9 35/18 43/19 45/24 47/20 47/20</p> <p>remember -- [2] 33/19 35/18</p> <p>rendered [1] 16/2</p> <p>rendition [1] 51/1</p> <p>report [5] 4/18 4/23 6/21 7/6 45/17</p> <p>reported [1] 24/21</p> <p>reporting [2] 1/21 5/2</p> <p>represent [2] 10/7 49/23</p> <p>representation [1] 40/11</p> <p>representations [1] 45/1</p> <p>representatives [16] 11/7 12/13 12/18 14/21 25/19 35/13 38/19 39/13 40/8 40/16 41/13 44/6 44/23 46/13 49/7 49/25</p> <p>represented [1] 14/16</p> <p>representing [1] 4/12</p> <p>represents [1] 27/8</p> <p>request [5] 11/14 13/13 16/16 16/17 16/20</p> <p>requested [1] 46/7</p> <p>requesting [1] 26/9</p> <p>requesting -- [1] 26/9</p> <p>requests [10] 6/9 7/9 13/12 13/16 15/22 15/25 17/5 19/10 19/14 19/23</p> <p>require [1] 16/25</p> <p>required [1] 12/2</p> <p>requirement [9] 22/10 25/8 26/25 27/6 29/21 35/16 35/17 42/4 44/15</p> <p>requirements [10] 5/18 13/8 22/9 22/11 30/25 38/2 47/1 47/8 47/17 47/18</p> <p>resolve [2] 21/22 27/9</p> <p>respectively [1] 7/3</p> <p>respectively -- [1] 7/3</p> <p>respond [2] 15/20 17/5</p> <p>responded [5] 15/12 19/10 19/14 19/22 46/10</p> <p>response [4] 15/10 15/18 16/3 30/11</p> <p>responses [2] 11/15 13/16</p> <p>rest [1] 17/6</p> <p>resume [1] 40/20</p> <p>reveal [1] 27/14</p> <p>revenue [21] 22/9 22/10 22/11 25/7 26/25 27/6 29/21 30/25 35/16 35/17 38/2 42/4 44/15 44/16 44/21 47/1 47/5 47/8 47/16 47/17 47/17</p> <p>revenue -- [1] 47/17</p>
--	---	--

<b>R</b> <b>revenues</b> [1] 47/18 <b>reversed</b> [2] 42/4 42/7 <b>review</b> [5] 4/4 5/16 6/3 6/7 7/17 <b>reviewed</b> [7] 13/7 13/12 13/16 13/17 18/9 28/12 28/14 <b>reviewing</b> [4] 4/7 12/8 28/12 47/19 <b>revisions</b> [1] 17/1 <b>RICHARD</b> [3] 1/17 3/1 3/12 <b>Riggs</b> [2] 16/14 18/7 <b>right</b> [16] 3/19 3/22 4/1 11/1 19/4 22/21 23/12 27/20 28/8 29/2 29/8 30/1 38/10 45/6 48/4 48/18 <b>role</b> [5] 5/12 7/3 7/7 23/13 23/22 <b>rolled</b> [2] 9/23 9/24 <b>room</b> [34] 22/22 22/25 22/25 24/1 24/9 24/25 25/1 25/5 25/9 29/9 30/2 31/10 31/12 31/19 33/8 35/12 36/16 37/3 37/3 37/19 38/12 38/17 38/18 41/3 42/14 43/4 43/8 43/17 45/1 46/7 46/20 49/6 49/6 49/6 <b>rows</b> [1] 43/11 <b>RPR</b> [1] 1/21 <b>rule</b> [2] 7/10 7/16 <b>ruled</b> [2] 7/18 7/20 <b>rules</b> [1] 15/11 <b>ruling</b> [1] 49/23 <b>run</b> [1] 20/3	<b>sewer</b> [3] 6/14 6/20 6/24 <b>sharing</b> [6] 9/13 21/18 21/23 23/7 24/4 24/20 <b>Shaw</b> [2] 20/23 31/11 <b>she</b> [7] 5/6 18/2 34/21 34/22 34/22 41/20 41/22 <b>sheet</b> [2] 21/5 21/25 <b>sheets</b> [1] 21/6 <b>shortly</b> [2] 18/6 32/11 <b>should</b> [3] 17/24 24/18 40/15 <b>show</b> [1] 50/10 <b>side</b> [2] 15/8 30/23 <b>sign-in</b> [2] 21/5 21/6 <b>significant</b> [4] 17/1 30/19 31/2 31/21 <b>similar</b> [2] 7/5 16/19 <b>simply</b> [3] 6/16 51/6 51/13 <b>Simpson</b> [1] 2/11 <b>sir</b> [2] 3/22 22/21 <b>sit</b> [2] 20/7 43/8 <b>site</b> [1] 12/8 <b>sitting</b> [2] 34/24 43/10 <b>situations</b> [1] 15/12 <b>six</b> [1] 30/18 <b>sleep</b> [1] 32/21 <b>small</b> [3] 6/14 6/19 6/24 <b>so</b> [20] 5/10 6/15 7/7 7/20 9/2 12/4 15/10 15/18 20/4 23/18 23/24 28/13 28/18 34/7 34/23 36/11 37/13 44/12 47/6 53/9 <b>some</b> [39] 6/13 9/15 10/1 15/24 16/6 16/25 17/6 17/9 17/21 18/13 20/5 21/16 21/17 21/19 23/8 24/16 25/22 25/23 28/12 30/15 30/19 31/6 31/8 32/2 32/4 32/10 33/4 34/2 36/20 37/4 37/5 37/24 39/21 39/22 41/1 41/2 42/10 42/24 44/13 <b>somebody</b> [2] 15/19 38/22 <b>someone</b> [13] 8/21 15/3 15/7 15/8 15/16 15/24 18/20 27/25 33/19 33/22 34/8 41/17 42/5 <b>something</b> [7] 11/17 12/22 15/1 17/22 18/22 30/5 41/16 <b>sometime</b> [3] 21/20 37/13 44/4 <b>sometimes</b> [3] 11/13 11/13 15/13 <b>sometimes --</b> [1] 11/13 <b>sorry</b> [3] 30/5 38/14 44/8 <b>sort</b> [5] 5/20 15/17 23/22 23/23 32/20 <b>sought</b> [1] 10/9 <b>South</b> [1] 2/12 <b>Sower</b> [2] 3/3 3/14 <b>speaking</b> [1] 31/1 <b>SPECIAL</b> [1] 2/9 <b>specific</b> [6] 5/22 9/2 12/16 12/23 30/16 32/19 <b>specifically</b> [3] 26/3 48/22 50/14 <b>spring</b> [1] 10/13 <b>SS</b> [1] 53/1 <b>staff</b> [35] 3/20 3/23 4/2 4/9 5/25 6/1 6/7 6/20 6/22 6/24 7/5 7/8 7/8 7/16 8/15 10/11 13/9 13/12 16/6 17/19 17/23 18/21 19/13 20/22 23/10 23/10 25/9 31/5 31/19 31/23 35/7 36/13 37/2 37/18 51/20 <b>staff --</b> [2] 7/8 23/10 <b>staff's</b> [1] 6/22 <b>Stainless</b> [7] 9/17 9/19 10/7 10/10 10/17 10/24 14/3 <b>start</b> [1] 20/3 <b>started</b> [3] 37/15 41/8 51/4 <b>starting</b> [1] 43/20 <b>state</b> [6] 3/10 14/4 24/6 45/14 53/1 53/4 <b>stated</b> [2] 13/6 53/5 <b>statement</b> [14] 1/15 3/1 6/18 19/21 23/24 42/21 45/9 45/18 45/25 50/16 50/19	51/10 52/5 53/5 <b>statements</b> [4] 16/1 16/4 36/22 38/3 <b>statutory</b> [1] 5/18 <b>stay</b> [2] 25/12 44/12 <b>stenographic</b> [2] 53/7 53/9 <b>still</b> [4] 5/6 29/8 39/22 40/25 <b>stipulation</b> [2] 47/23 48/24 <b>Street</b> [2] 1/22 2/12 <b>strike</b> [1] 7/14 <b>subjectively</b> [1] 51/18 <b>submitted</b> [2] 30/11 46/21 <b>subsequently</b> [3] 9/13 9/22 10/9 <b>substance</b> [7] 14/24 34/25 38/21 39/1 49/9 49/12 50/2 <b>substantive</b> [1] 21/15 <b>such</b> [8] 7/1 8/9 9/3 15/3 26/22 36/20 41/6 44/16 <b>sufficient</b> [1] 17/10 <b>suggesting</b> [2] 26/9 39/24 <b>Suite</b> [1] 1/22 <b>superiors</b> [1] 40/14 <b>supervision</b> [1] 53/8 <b>support</b> [1] 48/25 <b>supposed</b> [1] 40/22 <b>surcharge</b> [1] 10/2 <b>sure</b> [13] 5/5 5/11 6/16 13/14 17/3 17/22 19/18 25/14 31/13 35/2 48/12 50/11 50/24 <b>surprised</b> [1] 46/17 <b>swear</b> [1] 16/15 <b>sworn</b> [4] 1/15 3/1 53/5 53/6
<b>S</b> <b>said</b> [19] 7/5 8/21 16/25 17/8 17/20 27/17 28/16 29/19 30/5 34/14 35/2 35/5 38/13 38/23 41/20 45/22 46/16 53/7 53/8 <b>salutations</b> [4] 38/24 49/13 49/17 50/5 <b>same</b> [7] 13/5 13/20 14/16 22/22 29/9 49/16 49/20 <b>sat</b> [3] 43/10 43/16 43/20 <b>say</b> [18] 8/11 10/18 22/7 23/9 23/10 23/24 28/11 28/16 29/16 30/8 33/3 35/19 37/20 40/10 41/22 43/16 43/22 49/11 <b>say --</b> [1] 28/16 <b>saying</b> [3] 17/5 26/15 31/1 <b>schedule</b> [4] 6/4 13/10 32/19 32/23 <b>scheduled</b> [3] 20/3 48/22 49/2 <b>schedules</b> [1] 16/21 <b>scheduling</b> [1] 18/14 <b>Scott</b> [2] 20/23 31/11 <b>second</b> [1] 20/1 <b>secretary</b> [2] 34/8 41/17 <b>see</b> [3] 12/21 18/10 40/24 <b>see --</b> [1] 40/24 <b>seem</b> [1] 18/10 <b>seemed</b> [3] 18/2 30/24 32/12 <b>seen</b> [1] 50/11 <b>send</b> [1] 17/25 <b>sense</b> [1] 39/17 <b>sent</b> [2] 8/15 12/3 <b>separate</b> [2] 9/18 14/17 <b>September</b> [1] 10/8 <b>service</b> [13] 1/1 2/3 2/9 3/2 3/21 3/23 4/2 20/22 22/19 45/6 50/12 50/15 51/7 <b>session</b> [2] 30/2 48/21 <b>set</b> [1] 53/6 <b>settled</b> [2] 23/17 29/22 <b>settlement</b> [32] 23/16 24/11 24/15 24/19 27/13 27/18 29/25 31/2 31/4 31/16 34/10 36/15 37/10 38/12 38/18 39/5 40/5 40/16 40/25 41/5 41/9 41/11 42/23 44/25 45/19 47/12 47/21 47/22 47/22 48/8 48/23 49/6 <b>settlement --</b> [2] 38/12 47/22 <b>settling</b> [1] 22/6 <b>seven</b> [1] 30/18	<b>sewer</b> [3] 6/14 6/20 6/24 <b>sharing</b> [6] 9/13 21/18 21/23 23/7 24/4 24/20 <b>Shaw</b> [2] 20/23 31/11 <b>she</b> [7] 5/6 18/2 34/21 34/22 34/22 41/20 41/22 <b>sheet</b> [2] 21/5 21/25 <b>sheets</b> [1] 21/6 <b>shortly</b> [2] 18/6 32/11 <b>should</b> [3] 17/24 24/18 40/15 <b>show</b> [1] 50/10 <b>side</b> [2] 15/8 30/23 <b>sign-in</b> [2] 21/5 21/6 <b>significant</b> [4] 17/1 30/19 31/2 31/21 <b>similar</b> [2] 7/5 16/19 <b>simply</b> [3] 6/16 51/6 51/13 <b>Simpson</b> [1] 2/11 <b>sir</b> [2] 3/22 22/21 <b>sit</b> [2] 20/7 43/8 <b>site</b> [1] 12/8 <b>sitting</b> [2] 34/24 43/10 <b>situations</b> [1] 15/12 <b>six</b> [1] 30/18 <b>sleep</b> [1] 32/21 <b>small</b> [3] 6/14 6/19 6/24 <b>so</b> [20] 5/10 6/15 7/7 7/20 9/2 12/4 15/10 15/18 20/4 23/18 23/24 28/13 28/18 34/7 34/23 36/11 37/13 44/12 47/6 53/9 <b>some</b> [39] 6/13 9/15 10/1 15/24 16/6 16/25 17/6 17/9 17/21 18/13 20/5 21/16 21/17 21/19 23/8 24/16 25/22 25/23 28/12 30/15 30/19 31/6 31/8 32/2 32/4 32/10 33/4 34/2 36/20 37/4 37/5 37/24 39/21 39/22 41/1 41/2 42/10 42/24 44/13 <b>somebody</b> [2] 15/19 38/22 <b>someone</b> [13] 8/21 15/3 15/7 15/8 15/16 15/24 18/20 27/25 33/19 33/22 34/8 41/17 42/5 <b>something</b> [7] 11/17 12/22 15/1 17/22 18/22 30/5 41/16 <b>sometime</b> [3] 21/20 37/13 44/4 <b>sometimes</b> [3] 11/13 11/13 15/13 <b>sometimes --</b> [1] 11/13 <b>sorry</b> [3] 30/5 38/14 44/8 <b>sort</b> [5] 5/20 15/17 23/22 23/23 32/20 <b>sought</b> [1] 10/9 <b>South</b> [1] 2/12 <b>Sower</b> [2] 3/3 3/14 <b>speaking</b> [1] 31/1 <b>SPECIAL</b> [1] 2/9 <b>specific</b> [6] 5/22 9/2 12/16 12/23 30/16 32/19 <b>specifically</b> [3] 26/3 48/22 50/14 <b>spring</b> [1] 10/13 <b>SS</b> [1] 53/1 <b>staff</b> [35] 3/20 3/23 4/2 4/9 5/25 6/1 6/7 6/20 6/22 6/24 7/5 7/8 7/8 7/16 8/15 10/11 13/9 13/12 16/6 17/19 17/23 18/21 19/13 20/22 23/10 23/10 25/9 31/5 31/19 31/23 35/7 36/13 37/2 37/18 51/20 <b>staff --</b> [2] 7/8 23/10 <b>staff's</b> [1] 6/22 <b>Stainless</b> [7] 9/17 9/19 10/7 10/10 10/17 10/24 14/3 <b>start</b> [1] 20/3 <b>started</b> [3] 37/15 41/8 51/4 <b>starting</b> [1] 43/20 <b>state</b> [6] 3/10 14/4 24/6 45/14 53/1 53/4 <b>stated</b> [2] 13/6 53/5 <b>statement</b> [14] 1/15 3/1 6/18 19/21 23/24 42/21 45/9 45/18 45/25 50/16 50/19	<b>T</b> <b>table</b> [1] 43/8 <b>tainted</b> [1] 45/20 <b>take</b> [8] 6/1 6/2 6/15 7/7 47/10 49/11 50/13 51/5 <b>taken</b> [7] 3/2 43/23 46/9 46/17 53/5 53/7 53/9 <b>taking</b> [2] 24/25 36/23 <b>talk</b> [1] 42/2 <b>talking</b> [4] 8/13 8/19 22/7 35/13 <b>tariff</b> [2] 10/9 10/24 <b>technical</b> [1] 5/20 <b>telephone</b> [6] 18/8 20/17 33/16 33/17 33/24 34/15 <b>tell</b> [9] 4/1 5/12 7/23 10/5 11/15 12/25 19/4 36/17 45/13 <b>tentatively</b> [2] 40/9 40/10 <b>termed</b> [1] 47/22 <b>TERMS</b> [2] 1/6 1/10 <b>terrific</b> [1] 3/15 <b>testify</b> [1] 48/25 <b>testifying</b> [1] 47/10 <b>testimony</b> [14] 6/6 6/12 6/22 13/17 17/3 17/8 19/8 19/11 19/15 22/3 37/15 43/23 53/6 53/7 <b>than</b> [19] 11/19 17/11 22/24 23/2 23/18 24/1 33/7 33/22 35/7 35/15 35/17 38/11 38/16 38/24 42/6 43/18 44/24 49/5 49/17 <b>Thank</b> [1] 52/3 <b>that</b> [290] <b>that --</b> [8] 8/17 19/18 23/14 37/24 38/5 39/18 39/24 40/23 <b>that it</b> [1] 42/6 <b>that's</b> [19] 3/15 14/18 14/25 18/24 22/20 23/24 27/7 27/13 30/6 35/22 38/5 41/21 42/12 46/11 46/14 48/5 51/9 51/14 52/2 <b>the --</b> [35] 6/23 8/15 12/1 13/15 14/4 14/6 14/16 16/24 16/25 19/19 19/24 20/18 21/16 21/18 21/22 22/6 23/6 24/3 25/1 25/4 25/21 27/10 28/21 30/14 35/20 36/2



<p><b>T</b></p> <p>the --... [9] 36/11 37/12 38/11 40/11 41/17 42/2 42/21 43/10 46/4</p> <p>their [15] 7/2 8/22 9/20 11/16 14/8 17/3 17/8 24/13 25/13 29/19 29/23 30/24 36/15 39/16 39/20</p> <p>them [10] 7/17 11/15 13/19 17/4 24/11 31/15 31/17 32/4 35/3 40/1</p> <p>themselves [2] 42/4 49/18</p> <p>then [21] 6/6 6/10 15/15 19/8 21/15 21/20 22/2 28/9 28/9 32/11 33/22 34/2 34/7 36/24 37/1 37/16 37/17 41/2 42/25 43/19 46/4</p> <p>then -- [1] 37/1</p> <p>there [75]</p> <p>there -- [2] 6/13 31/8</p> <p>there's [2] 5/21 5/23</p> <p>thereafter [1] 53/7</p> <p>these [5] 21/14 22/22 31/23 47/16 51/15</p> <p>they [47] 7/20 8/1 8/16 8/23 9/24 10/7 13/7 13/14 13/20 14/8 14/15 14/17 15/9 17/2 17/8 19/15 19/21 22/1 22/20 24/18 25/14 25/15 25/18 26/16 27/25 29/16 29/19 29/20 29/22 31/9 35/4 35/7 36/10 36/16 39/16 39/19 39/21 40/6 40/6 40/16 40/20 41/6 44/8 44/12 46/10 47/3 47/4</p> <p>they -- [2] 40/6 40/16</p> <p>they're [1] 7/18</p> <p>things [1] 5/20</p> <p>think [44] 3/14 4/14 9/11 9/17 13/5 14/7 14/16 16/14 18/15 19/18 19/20 19/23 21/1 21/17 21/19 21/25 22/4 23/11 24/11 27/17 29/22 32/4 34/18 34/20 35/11 37/15 39/22 40/3 40/11 40/12 40/15 40/24 41/6 41/23 42/2 43/18 44/13 46/23 46/24 47/3 47/4 47/5 48/7 51/2</p> <p>thinking [4] 48/5 48/14 49/1 49/3</p> <p>this [16] 9/6 9/20 12/9 15/20 24/19 27/20 28/22 40/12 40/14 41/21 41/22 48/23 50/11 50/19 51/1 53/13</p> <p>those [32] 4/7 5/20 6/9 7/12 7/16 9/13 9/21 9/23 10/11 10/17 10/22 10/23 10/25 16/3 17/2 17/11 17/13 19/16 23/2 27/5 27/14 27/22 28/2 28/12 30/19 31/8 32/2 32/3 37/25 38/16 44/8 47/11</p> <p>thought [13] 5/9 15/14 18/11 18/17 22/1 31/4 31/24 32/15 32/16 32/21 45/19 51/17 51/23</p> <p>three [1] 5/23</p> <p>threw [4] 22/5 25/7 32/14 35/7</p> <p>through [6] 5/1 20/4 26/18 41/11 41/16 49/2</p> <p>throw [1] 23/20</p> <p>Thursday [2] 34/21 34/22</p> <p>thus [1] 5/25</p> <p>time [23] 9/8 11/24 15/11 17/9 25/23 27/5 29/23 31/20 31/25 32/25 37/7 37/11 39/8 41/2 41/22 42/20 42/25 43/2 43/12 43/21 46/3 51/3 53/5</p> <p>time -- [1] 42/20</p> <p>times [1] 4/19</p> <p>to -- [4] 26/16 27/23 39/3 40/13</p> <p>together [5] 25/22 36/1 36/9 41/5 41/6</p> <p>told [6] 17/25 18/16 22/25 28/4 32/3 34/8</p> <p>too [3] 24/10 32/15 32/16</p> <p>took [1] 21/19</p> <p>top [1] 20/25</p> <p>total [2] 27/8 30/25</p> <p>totally [1] 13/20</p> <p>towards [1] 8/16</p>	<p>Tower [1] 2/12</p> <p>town [2] 18/16 34/23</p> <p>transcript [3] 46/2 47/19 53/8</p> <p>true [1] 53/8</p> <p>trust [2] 22/21 29/15</p> <p>trust -- [1] 29/15</p> <p>try [5] 15/12 26/10 26/16 27/9 40/14</p> <p>trying [1] 23/19</p> <p>Tuesday [1] 20/3</p> <p>turned [2] 21/15 44/15</p> <p>two [19] 8/13 9/11 9/12 9/21 10/12 13/1 13/21 14/18 15/6 15/22 16/18 17/11 17/13 20/6 20/24 22/17 22/17 31/19 32/14</p> <p>two -- [2] 9/11 16/18</p> <p>type [3] 8/19 9/15 13/6</p> <p>typewritten [2] 53/8 53/8</p> <p>typically [11] 6/4 6/8 6/13 12/1 12/4 14/23 20/4 21/2 21/4 27/6 27/9</p> <p><b>U</b></p> <p>ultimate [1] 40/17</p> <p>ultimately [5] 9/24 12/9 23/17 29/22 42/7</p> <p>unable [1] 16/8</p> <p>unavailable [1] 33/23</p> <p>uncomfortable [1] 28/9</p> <p>uncontested [2] 15/15 22/1</p> <p>under [7] 8/2 14/8 14/9 16/5 43/12 53/7 53/13</p> <p>understanding [6] 24/13 39/18 39/21 42/9 46/6 51/12</p> <p>universal [1] 32/12</p> <p>unregulated [1] 16/10</p> <p>until [8] 12/10 13/2 36/1 37/16 37/17 42/19 43/3 43/23</p> <p>unusual [4] 12/17 15/2 15/6 18/20</p> <p>unwritten [1] 51/2</p> <p>up [13] 23/21 26/11 26/17 31/1 31/6 31/12 31/24 32/6 32/19 33/1 39/20 41/23 45/15</p> <p>update [1] 16/21</p> <p>updates [1] 16/22</p> <p>upon [6] 7/18 7/20 25/11 29/22 31/1 31/25</p> <p>Urban [1] 14/2</p> <p>us [1] 25/14</p> <p>use [2] 9/6 23/12</p> <p>used [1] 45/22</p> <p>useful [1] 18/11</p> <p>user [1] 9/16</p> <p>Usually [1] 13/13</p> <p>utilities [2] 1/11 16/9</p> <p>utility [5] 4/4 6/10 6/24 12/3 13/25</p> <p><b>V</b></p> <p>value [2] 30/17 31/21</p> <p>various [1] 9/9</p> <p>verifying [1] 28/2</p> <p>very [1] 25/6</p> <p>violative [2] 51/17 51/23</p> <p><b>W</b></p> <p>waited [2] 42/24 42/24</p> <p>waking [1] 45/15</p> <p>want [4] 27/22 27/24 29/20 38/6</p> <p>wanted [7] 17/3 19/13 19/22 25/14 33/19 36/22 50/13</p> <p>wanting [2] 15/24 24/14</p> <p>was [170]</p> <p>was -- [4] 30/13 31/5 33/23 45/17</p> <p>wasn't [2] 24/10 37/6</p> <p>water [3] 6/14 6/20 6/24</p>	<p>way [4] 27/19 27/21 39/17 43/3</p> <p>we [80]</p> <p>we -- [4] 6/3 11/12 50/25 51/2</p> <p>we'll [2] 11/13 36/9</p> <p>we're [1] 8/13</p> <p>Web [1] 12/8</p> <p>Web site [1] 12/8</p> <p>Wednesday [1] 34/21</p> <p>week [1] 48/17</p> <p>weekend [2] 34/23 36/7</p> <p>weeks [1] 17/7</p> <p>Welch [1] 16/2</p> <p>well [10] 4/9 7/17 13/5 13/20 27/13 28/21 31/6 35/10 40/10 47/21</p> <p>went [12] 21/13 30/7 31/11 32/6 33/4 37/3 37/14 37/15 37/23 41/3 44/3 46/7</p> <p>were [65]</p> <p>were -- [5] 8/11 13/21 14/15 23/11 40/1</p> <p>what [26] 4/2 5/12 7/3 7/5 8/21 9/9 12/25 17/24 19/4 22/1 22/2 24/1 27/7 27/11 28/3 31/24 32/25 34/25 36/17 39/7 41/10 42/1 45/13 46/3 48/6 51/18</p> <p>what's [1] 38/23</p> <p>whatever [2] 15/6 46/2</p> <p>when [23] 4/22 5/16 7/23 8/1 10/18 15/10 17/7 17/8 23/9 25/20 29/16 30/6 31/18 31/18 37/20 39/8 40/22 41/8 42/21 43/7 44/14 49/11 50/24</p> <p>when -- [1] 31/18</p> <p>where [4] 8/18 15/13 27/2 43/8</p> <p>whether [23] 5/6 5/17 5/20 11/17 13/7 14/8 15/9 16/8 19/12 19/15 19/15 19/21 20/19 21/3 26/2 26/13 28/16 30/20 31/4 31/7 36/11 36/11 45/22</p> <p>which [20] 4/4 6/8 6/20 6/21 6/22 8/2 9/18 10/12 11/2 15/11 15/14 15/23 18/15 22/25 32/5 48/6 49/23 50/11 51/17 51/23</p> <p>while [1] 29/20</p> <p>who [21] 4/18 13/18 15/3 15/8 15/8 17/19 18/20 19/8 19/9 19/14 19/22 20/21 29/19 31/8 36/22 41/18 41/24 42/8 43/9 45/18 47/10</p> <p>who -- [1] 15/8</p> <p>whoever [1] 42/3</p> <p>whose [1] 20/5</p> <p>why [2] 27/16 48/5</p> <p>why -- [1] 48/5</p> <p>will [8] 6/7 6/22 6/24 12/5 17/7 35/6 40/13 49/23</p> <p>within [1] 24/17</p> <p>without [5] 10/4 15/17 16/6 16/11 47/19</p> <p>witness [4] 37/15 51/16 51/23 53/6</p> <p>witnesses [14] 6/12 18/14 18/15 19/7 19/7 19/24 19/25 20/5 37/8 39/25 40/5 41/2 47/10 48/25</p> <p>word [2] 23/12 45/22</p> <p>work [7] 7/8 7/8 13/6 16/7 16/9 17/20 26/16</p> <p>worked [2] 41/18 43/3</p> <p>working [2] 4/8 41/25</p> <p>would [62]</p> <p>would -- [2] 11/23 38/25</p> <p>wouldn't [4] 12/17 16/12 16/15 28/1</p> <p>writing [1] 4/13</p> <p>written [3] 21/25 41/19 50/25</p> <p><b>Y</b></p> <p>yeah [7] 22/16 23/14 24/3 35/17 37/22 38/25 47/17</p> <p>years [3] 3/25 8/14 51/4</p> <p>yes [37] 4/17 4/24 5/15 7/22 10/25 14/15</p>
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